

*Am. R. Roadhead,*  
A FAITHFUL HISTORY  
*With the compliments of*  
*Wm. D. Fennell.* OF THE *H. H. H. H. H.*

FROM THE PERIOD OF OUR FIRST INTERCOURSE WITH THEM, DOWN TO  
THE PRESENT TIME.

WHICH PRODUCED A SEPARATION OF THE TRIBE, AT AN EARLY PERIOD;  
ORGANIZING A NATION EAST AND A NATION WEST OF  
THE MISSISSIPPI RIVER.

OF THE CAUSES WHICH LED TO THEIR SUBSEQUENT DIVISION INTO THREE  
PARTIES, AND INVOLVED THEM IN THEIR PRESENT DEPLORABLE  
CONDITION, AND OF THE NATURE AND EXTENT  
OF THEIR PRESENT CLAIMS.

IN A CONDENSED AND READABLE FORM.

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## INTRODUCTION.

The Cherokees, who have negotiated many Treaties with the United States, which they observed in good faith on their part, earnestly solicit a careful perusal of the following pages, by the President and his counsellors on Indian affairs—by the Senators and Representatives in the Congress of the United States. The subject discussed is one of vast importance, as involving not only vast pecuniary concerns, but the integrity of this government. It is not of recent origin—the injured parties have been unceasing in their appeals for redress, ever since the destruction of the old Western Nation, in the year 1839.

What is the cause of the unfortunate state of things which has so long kept the Cherokees a divided and distracted people, and has retarded the progress of their prosperity? The answer is a brief but melancholy one: It is in consequence of a persevering refusal on the part of our government, heretofore, to redeem its faith pledged by Treaty stipulations. Let the government of the United States do but *Justice*, even at this late period, and the halls of the War Department and Congress will no longer echo with the complaints of the Cherokees. But *Justice*, of late years, appears not only to have been hoodwinked, but deaf. When the "Old Settlers," the "Western Cherokees," have hitherto come to elaim a fulfilment of their Treaty stipulations, by one of which they laid the ground-work for the removal of all the Indians from the South and South-Western States, and by another the United States obtained a large portion of the present State of Arkansas, they were told to "*go home and look to those who were put in possession of their country and government for redress.*"

When the "Treaty party," who were considered of sufficient character and power to make binding a *relinquishment of the entire Cherokee country east of the Mississippi*, came to ask a fulfilment of their Treaty on the part of the United States, they were told to "*go home—that this government could hold no intercourse with a MINORITY of the tribe!*" Thus—it must be said, for it is true—an *Indian Treaty was only considered, by our wise and humane government, BINDING upon the Indian party to the compact!* When their lands were surrendered, as provided for, there was an end to the whole matter!! Thank God these times are past; we trust, never to return. The present Executive, the head of our Indian affairs, the Congress of the United States, have agreed to listen. When they become fully informed upon the subject now under examination, they will *perform their duty*, and direct the *INDIAN TREATIES*, which are supreme laws, to be faithfully executed. This is all we require.

The Cherokees who appeal to you, "*ask for nothing that is not RIGHT!*" Do not, in your strength and power, compel them to "*submit to any thing that is WRONG.*"

## THE CHEROKEE AFFAIRS,

*Carefully and impartially examined.—Three separate and distinct parties shewn to exist in the Cherokee country—their origin, progress, and present condition exhibited. Each party complaining of the violation of Treaty stipulations by the government of the United States, by which they alledge they have sustained heavy losses, and for which they now claim indemnity.*

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THE undersigned have resolved upon the performance of a laborious task. They have undertaken to present a faithful history of the Cherokee Tribe of Indians, from the date of their first Treaty with the United States, in 1785, up to the present time. In tracing this history, the whole of the difficulties among the Cherokees, which have for many years rendered them a divided and miserable people, will be fully, fearlessly, and impartially discussed. The questions involved in this discussion are highly important, and of deep interest, not only to the Indians now contending for their rights, but to the United States and to humanity. They have undergone a careful and laborious investigation, the result of which is now submitted to the consideration of the Executive, of Congress, and of the People of the United States. We earnestly and solemnly invoke an attentive hearing. The picture we shall draw will be worth looking at. It will be drawn from realities.

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*Division of the old Cherokee nation into several parties.—Their designation.*

There exists, at the present time, three distinct and separate parties in the Cherokee country, each petitioning the government of the United States for a redress of grievances. The first are called the "old settlers," formerly composing the "Cherokee nation west of the Mississippi river." The second is known as the "Treaty Party," composed of the remnant of those who signed and approved the Treaty of 1835, which ceded to the United States all the country owned and occupied by the Cherokees, east of the Mississippi, and from which circumstance it derives its name. The third is called the "Anti-Treaty" or "Ross party," who have obtained possession of the Cherokee country and government under the operation of the Treaty of 1835, although they always repudiated that Treaty, declared it a coercive measure, negotiated with a minority of the nation, and a "fraud practised upon the Cherokee people and upon the United States." These three parties are represented by deputations now at the seat of government. The grievances complained of have heretofore been submitted to the President, Secretary of War and Congress, by themselves and by their counsel; and the undersigned will now, in as succinct a manner as possible, to make it intelligible, present a plain, fair, unbiassed statement of the whole case, taken from various Treaties, memorials and other public documents, bearing upon the issue. The pretensions and claims of the parties shall be taken up in the order in which they are above placed.



1st.—*The origin of the Cherokee nation, west of the Mississippi—giving the causes which led to their separation from the parent tribe—their struggles in the West—the proud elevation they attained as a civilized nation—with the causes which produced their present deplorable condition, and gave rise to their present claim against the United States.*

The “OLD SETTLERS” or “WESTERN CHEROKEES” still claim to be an independent NATION, separate and apart from the present ruling government in the Cherokee country. They date their national existence as far back as the year 1817, when they formally and officially separated from their brethren east of the Mississippi, and removed to and organized a nation west of that river, under the provisions of a Treaty concluded that year, between three parties in interest, named in the caption—“Commissioners Plenipotentiary of the United States of America”—“Chiefs, head-men and warriors of the Cherokee nation east of the Mississippi river”—and “Chiefs, head-men and warriors of the Cherokees on the Arkansas river.” The NATION, constituted by this Treaty, has been officially recognised as the “Cherokee nation west of the Mississippi river,” both by the government of the United States and the eastern Cherokee nation, from that time up to the year 1839, when its functions were suspended and its existence afterwards terminated, by the operation of the Treaty of 1835, to which it was not a party.

This Nation, under the name of the “Cherokee nation west of the Mississippi,” had made two Treaties with the United States, after its separation from the eastern nation by the Treaty of 1817. The first of these Treaties was concluded on the 6th of May, 1828, by which the country then held by the western Cherokees, within the present limits of Arkansas, was exchanged for a country further west, estimated to contain *seven millions of acres of land*, with a perpetual out-let west of the same, extending to the extreme western limits of the United States. This cession or exchange of lands, was confirmed by another Treaty compact, concluded between the same parties, at Fort Gibson, in February, 1833; and this is the last Treaty to which the western Cherokees, now known as the “old settlers,” were a party. The country thus purchased and paid for by them, was forcibly taken from their possession, under the provisions of the Treaty of 1835, concluded between the United States and the *Eastern Cherokees*, in which the *western nation* had no voice. It is upon this allegation, involving breach of faith on the part of the United States, that the claim of the old settlers is based. They claim from the United States a restitution of their *country*, their *government*, and their *rights*, of which they were thus lawlessly dispossessed; and, if this cannot now be effected to the full extent, (as it is presumed it cannot, without inflicting injury upon others and involving the United States in great expense and difficulty,) they then demand payment and indemnity for the country from which they were forcibly ejected and the losses they have sustained in consequence of that dispossession.

In order to obtain a clear and full understanding upon this subject, it becomes necessary to ascertain the origin of the Cherokee nation west, and trace the history and proceedings of the two nations up to the present time. To attain this object we have carefully examined all the public documents, throwing light upon the matter; and from the gleanings of our country's history, we will now proceed to the discharge of the delicate duty we have undertaken.

At the end of our Revolutionary struggle, by which we obtained a glorious national existence, the Cherokee tribe of Indians were found in proud and absolute possession of the most fertile, valuable and beautiful portions of the country, lying between the Ohio and the shores of the Atlantic, bordering upon the Carolinas and Georgia. In speaking of this once powerful race, as they existed long before we became a nation, and at the time their soil was first trodden by the foot of a white man, our own historian says, among other glowing de-

scriptions, in regard to them: "*The mountaineers of aboriginal America were the CHEROKEES, who occupied the upper valley of the Tennessee river, as far west as the Muscle Shoals and the highlands of Carolina, Georgia and Alabama, the most picturesque, most beautiful and most salubrious region east of the Mississippi.*"

The first Treaty upon record, between the United States and this nation, was concluded at Hopewell, on the Kennowee, on the 28th November, 1785. This Treaty was entered into at the termination of a protracted and sanguinary war between the contracting parties. It provides for an exchange of prisoners and the restoration of a peace, which has remained unbroken ever since. By the ninth article the concession is made to the United States, of right, by Congress, to pass laws regulating trade and intercourse with them, and of managing all their affairs. In the language of the same article, this right is conceded, "*for the benefit and comfort of the Indians, and for the prevention of injuries and oppressions, on the part of the citizens, or the Indians.*" The 12th article of the same Treaty promises as follows:—"That the Indians may have full confidence in the justice of the United States respecting their interests, they shall have the right to send a Deputy of their choice, whenever they think fit, to Congress." The boundary lines between the Cherokees and the citizens of the United States are, also, designated by this Treaty.

The next Treaty was concluded at the Indian Council ground on the bank of the Holsten, on the 2d July, 1791. This Treaty provides for an exchange of prisoners still held in captivity by both parties. It establishes the permanent boundary lines between their countries; and the United States agree to pay, beside other considerations, an annuity to the Cherokees thereafter, of one thousand dollars, for the extinguishment of their title to all their former country, lying beyond a certain described line. The 7th article, then, makes the following important and imposing guaranty of title, viz:—"The UNITED STATES solemnly guaranty to the CHEROKEE NATION, all their lands not hereby ceded!!!" It will be a difficult task for the United States to shew that this solemn pledge has not been inhumanly, shamefully violated. Fourteen Treaties were afterwards held with the Cherokees east of the Mississippi, under various pretences; under the operation of which their country gradually diminished, and slice after slice was added to the domain of their professing guardian, until the whole, at one fell swoop, was forcibly wrested from them by the Treaty of 1835! Yes, *forcibly*—it is not too strong a term.

A number of Cherokees became dissatisfied with some of the conditions of the Treaty of Hopewell, and, soon after its ratification, started in search of a new country. They embarked in pirogues on the Tennessee, and descended that river, the Ohio and Mississippi, to the mouth of the St. Francis, in the Spanish province of Louisiana, now the State of Arkansas, and made their first settlement on the banks of that stream. Thus, these first emigrants to the west, not only separated themselves from their own nation, but withdrew beyond the limits of the United States, and secured an *occupant title to the soil*, long before the United States obtained any claim to the lands within that province. This, then, may be called the origin, the germ of the Cherokee nation west of the Mississippi river.

From that period up to the year 1808, the settlement in the west gradually gained accession and strength by emigration from the nation in the east, and began to extend along the borders of Arkansas and White rivers. In that year, 1808, the eastern nation, having already become divided, under the designation of "Upper and Lower towns," sent deputations to Washington as representatives of both parties, who submitted a proposition to the President of the United States for a formal and final separation of the tribe, by "establishing a division line between the Upper and Lower towns." The one party desiring to remain east of the Mississippi, and begin the "establishment of fixed laws and regular government," and become "cultivators of the soil." The other party expressed their

anxiety to remove west of the Mississippi, and select a country there, which they would accept in exchange for their portion of the country east. These propositions were assented to by the President, and in his reply thereto, made on the 9th day of January, 1809, he authorises those who desire to remove west, to “*send an exploring expedition to reconnoitre the country on the Arkansas and White rivers;*” and he promised when this party had “*found a country suiting the emigrants and not claimed by other Indians,*” the United States would “*arrange with them the exchange of that, for a just portion of the country they leave, and to a part of which, proportioned to their numbers, they have a right.*”

This is the pledge given to that portion of the Cherokee nation now known as the “Old Settlers,” by President JEFFERSON in the year 1809, which induced the establishment of a nation west of the Mississippi, as the exclusive owners of a country of equal extent and value to that to be relinquished to the United States, east of that river.

The “exploring party,” thus authorized, proceeded to the country designated by the President, and selected lands lying between the Arkansas and White rivers, which are now within the limits of the State of Arkansas. Here they were joined by the pioneers, who had long before left their old home for the West, and settlements were immediately commenced under sanction of the promise made by the President. Emigration steadily continued up to the year 1817, when the “Western Cherokees” assumed a national character, and on the 8th of July in that year, a Treaty was entered into and concluded by and between General Andrew Jackson, Gov. Joseph McMinn, and General David Merriweather, commissioners, &c. on behalf of the United States, and deputies from the Cherokee nation east, and the Cherokees west of the Mississippi river. By reference to this Treaty, it will be found that the final division of the tribe, previously agreed upon, was consummated; and in the 3d, 4th, and 5th articles, stipulations are inserted, that thereafter they should hold their property separately, under the names of the “Cherokee nation east of the Mississippi river” and the “Cherokee nation west of the Mississippi river.” That the western nation ceded to the United States their portion of the country east, for an equal quantity of land in the west, in pursuance of the mutual understanding had at their council with the President in 1809, is plainly declared in the 5th article of this agreement, as follows, viz: “The United States bind themselves, in exchange for the lands ceded in the first and second articles hereof, to give to that part of the Cherokee nation on the Arkansas as much land on said river and White river as they have, or may hereafter receive from the Cherokee nation, east of the Mississippi, acre for acre, as the just portion due that part of the nation on the Arkansas, agreeably to their numbers,” &c. The same article then goes on to describe the boundaries of the lands thus given to the Western Cherokees in exchange for their lands east, relinquished to the United States as above stated.

That the treaty of 1817 was made to carry into effect, in an efficient and binding manner, the arrangement agreed upon in 1808-9, is fully set forth in the preamble to that instrument. At the time it was negotiated, the number of Cherokees, already settled in the Arkansas country, was estimated as exceeding two thousand souls—and in order to ascertain what number intended to emigrate and join the Western nation, it is stipulated in the 3d article, “that a census shall be taken of the whole Cherokee nation, during the month of June, in the year of our Lord, 1818, in the following manner, viz: That the census of those on the east side of the Mississippi river, who declare their intention of removing, shall be taken by a commissioner appointed by the President of the United States, and a commissioner appointed by the Cherokees on the Arkansas river; and the census of the Cherokees on the Arkansas river, and those removing there, and who at that time, declare their intention of removing there, shall be taken by a commissioner appointed by the



President of the United States, and one appointed by the Cherokees east of Mississippi river." [See *Treaty of 1817, Book of Indian Treaties, page 209, et. seq.*]

We have been thus particular in referring to the Treaty of 1817, as it is the first official or *binding compact* entered into between the United States and the Cherokees, for the establishment of a NATION west of the Mississippi. It appears manifest from a careful examination of this instrument, that *two nations of Cherokees* were here established, by what must be considered a *supreme law of the land*. The country in the east was divided—that part of the nation who determined to separate from the tribe and remove west, agreed that the portion of the country to which they were entitled, *should be ceded to the United States*; to which their brethren, who had determined to remain in their old country, assented. The cession was accordingly made, and the "Western nation" was paid in LANDS lying between the Arkansas and White rivers! Not a dollar of *money* was received for the country relinquished—it was merely an *exchange of lands, ACRE for ACRE!*

Thus was the agreement of 1809, for a separation of the tribe of Cherokees, and a division of their *common property*, put in legal form. The stipulation, that a census should be taken of all who had emigrated, or intended to remove west, and become citizens of the Western nation, *in the month of June, 1818*, clearly shows that the "country on the Arkansas" was not intended to be given to the *whole nation*, but to *that portion of it who had removed there, or who would express their intention of removing there* on or before a certain day! It was then agreed that the *common property* of the whole should be equitably divided, and thereafter held *separately*.

The Treaty of 1817 was concluded on the *8th of July* in that year, and the Western Cherokees were active in inducing their friends to join them in their new country, *before the time expired for taking the census*. The government of the United States had its agents vigorously employed in promoting the same object, but they were actuated by different motives. This treaty was looked upon as the ground-work of the future removal of the Indian population from the South and Southwestern States, beyond the Mississippi; and every means were used by the government to induce emigration under its provisions. On the other hand, the great majority of the tribe, who had determined to remain permanently in possession of their country east, and establish a regular government, manifested much dissatisfaction at the practical effect of that Treaty; and the period for taking the census being deferred to a late date through the interference of the United States, a delegation of "Eastern Cherokees" were sent to Washington in the winter of 1818, for the purpose of *finally adjusting* the terms of the Treaty of the preceding year, without taking the census!!!

The Hon. John C. Calhoun was then Secretary of War, and he entered into a convention with this delegation, by which a Treaty was concluded on the 27th February, 1819. [See *Treaty Book, page 265.*] In this Treaty or Convention, the Western Cherokees were not represented—it was negotiated and concluded between the United States and the Eastern nation exclusively. But the separate and independent character and rights of the Western nation were distinctly recognized and preserved. The preamble sets forth the intentions of the Eastern Cherokees in applying for this new arrangement. It dispenses with taking the census and makes another cession of land to the United States, which was to be considered and taken in full for the proportion to which they might be entitled under the operation of the Treaty of 1817. The first article makes this cession, and concludes as follows: "And it is further understood and agreed by the said parties, that the lands hereby ceded by the Cherokee nation, are in *full satisfaction of all claims which the United States have on them, on account of the cession to a part of their nation who have, or may hereafter emigrate to the Arkansas*; and this Treaty is a *final adjustment* of that of.

the 8th of July, 1817. The 5th article provides for the running of the boundary lines of the ceded lands—for securing the residue of the country to the Cherokees east, and for annulling certain leases which had been made under the Treaty of 8th July, 1817. The 6th article stipulates as follows :

“The contracting parties agree that the annuity to the Cherokee nation shall be paid, *two-thirds* to the Cherokees east of the Mississippi, and *one-third* to the Cherokees west of that river, as it is estimated that those who have emigrated, and have enrolled for emigration, constitute *one-third* of the whole nation; but, if the Cherokees *west of the Mississippi* object to this distribution, of which due notice shall be given them, before the expiration of one year after the ratification of this treaty, then the census, *solely for distributing the annuity*, shall be taken at such times, and in such manner, as the President of the United States may designate.”

Here is a clear and unequivocal declaration made by the United States and the Cherokee nation east, that there was, at that time, *a nation west of the Mississippi*—that the property they formerly held *in common* was now *divided*; and that the share allotted to each could not be increased or diminished, if the “Cherokees west of the Mississippi” assented to the terms thus proposed. The Western nation did consent—the taking of the census was dispensed with—the territory assigned and conveyed to them in Arkansas, was surveyed and marked off, embracing about four millions two hundred thousand acres; with the pledge from the government of the United States, that the lands *west of their western boundary* should be attached thereto, as soon as they could be purchased from the aboriginal occupants. The annuities were divided as agreed upon, and *one-third* paid to the nation west—they had a separate agent, appointed by the United States—and from that time they were treated as a distinct and separate nation, holding its own property, until their rights were invaded and their country forcibly and illegally taken possession of, under the provisions of the Treaty of 1835, negotiated by the United States and the Eastern Cherokee nation, neither of whom had any right, title, or interest in or to the country or government, of which they thus recklessly disposed. All the correspondence, between the parties to the Treaties of 1817, 1819 and 1823, held *anterior* to the Treaty of 1835, confirms the construction we have put upon these compacts, and conclusively proves that the Treaty of 1819 was regarded as a final measure, and that thereafter the Eastern and Western Cherokees were to be separate nations, entirely independent of each other.

After the separation thus consummated, both communities rapidly advanced in the arts of civilized life. The Western Cherokees, upon their first settlement in the then wilderness of the far west, were compelled to encounter difficulties and dangers which would have appalled, disheartened and defeated the advance of men less brave and adventurous and inured to hardships. The wild and warlike Osages, and other kindred tribes, looked upon them as the vanguard of a civilized population; and the horrors of a frontier life, so vividly described in the earliest period of American history, were experienced by the sturdy Cherokee pioneers, with all their train of heart-rending consequences. Murder, and conflagration, and robbery, showed themselves in every advanced settlement made by these people. The rough covering was scarcely placed on the humble cabin, when its inmates were told their doom by the startling crack of the rifle and the horrid yell of the savages surrounding it, in the still hour of the night. Thus every Cherokee, of necessity, became an armed warrior. They had formed a determination to relinquish their former habits and become a civilized people, depending upon the productions of the soil and their own labor for subsistence; and they rebuilt their cabins and tilled their ground, in little bands, with their women and children bearing arms near them. They drove the Osages back from their settlements, after a succession of bloody battles. In these various actions, the celebrated In-



dian, Capt. *Tuchee*, (Capt. Dutch,) now in this city, one of the Old Settler delegation, performed deeds of daring and intrepidity which might be placed on the page of history with thrilling effect—they are such as would mark him as a renowned warrior in any part of Christendom. But this is not our present design. We have adverted, thus briefly, to the early settlement of the Western Cherokees, simply to show how hardly these people earned, and how well they deserved the country which they occupied, even if they had not purchased and paid for it! There are several distinguished gentlemen, now members of the United States Senate, who will say we have not drawn a fictitious picture—but that we have spoken the truth.

In order to understand fully the locality of the Western Cherokees, after their boundaries were marked out to them under the provisions of the Treaty of 1817, it is necessary to state that their Western line was made to extend in that direction *as far as the title of the indigenous tribes had been extinguished by the United States*. The country lying immediately on their western border was owned and occupied by the Osages. These people, known and called “Great and Little Osages,” entered into numerous treaties of peace with their Cherokee neighbors, promising indemnity for losses occasioned by their various depredations, which were as often broken by them. At length they agreed to dispose of their lands adjoining the Cherokees on the west, as well to enable the United States to comply with *previous promises made to the Cherokees with regard to the outlet west*, as to satisfy the Cherokees in full for all outrages and depredations committed upon their persons and property; and to indemnify certain citizens of the United States for property taken from them by predatory bands of the Osage nations. This arrangement was first made by Major *Lovely*, United States Cherokee agent, and was afterwards embraced in a Treaty concluded by General *Clark*, Governor of Missouri, and superintendant of Indian affairs, at St. Louis, on the 25th September, 1818. The first article of this Treaty makes the cession to the United States, the boundaries of which are described as follows, viz: “Beginning at the Arkansas river, at where the present Osage boundary line strikes the river at *Frog Bayou*; then up the Arkansas and Verdigris, to the falls of Verdigris river; thence eastwardly to the Osage boundary line, at a point twenty leagues north from the Arkansas river; and with that line to the place of beginning.” [See page 249, vol. of Indian Treaties.]

The country embraced within this cession is generally known as the “*Lovely purchase*.” It was intended by all parties before the Treaty, that it was to be annexed to and form part of the Cherokee country. The Cherokees claimed it as a matter of right. That they never should thereafter be surrounded by white people, as promised by President Jefferson in 1809, was the great inducement which first separated them from the home of their fathers and led them beyond the Mississippi river. This promise was frequently repeated by succeeding administrations—and the “*Lovely purchase*” was made in 1818, to give the “*Western Cherokees*” their country “*without limits to the west*,” as promised to them by the President. It was estimated that this tract contained about three millions of acres, and gave the Cherokees an addition to their original survey, which increased their country, calculated for farming purposes, to about *seven millions of acres*, with the free and unmolested possession of all the country west to the Mexican line.

In defiance of this government pledge, however, white people immediately commenced a rapid settlement upon the lands embraced within the *Lovely purchase*—and the Cherokees again petitioned the President of the United States for a redemption of his promise. They were answered by the Executive, through the Secretary of War, on the 8th of October, 1821. Their claim was acknowledged, and all white settlers were peremptorily or-

dered to be removed, by military force, if necessary; and they were removed, and the land taken possession of by the Cherokees.

As we have said, both nations of Cherokees were now rapidly advancing in civilization, and exchanging the garb and weapons of the hunter for the implements of the farmer. In the year 1824 the Nation west adopted a written constitution, and established a regular government, composed of Executive, Judicial and Legislative departments. They had already become a united, contented and prosperous people. But they were not long destined to remain so, in their present position, for the reasons which we shall now briefly relate.

[*The causes which led to the Treaty of 1828.*]

The eastern Cherokees, considering the Treaty of 1819, a final adjustment of their territorial rights and limits, resolutely opposed any further cession of their lands. They enacted laws, providing for the infliction of heavy penalties on any citizen or citizens of their nation, who should thereafter attempt by word or deed to sanction such cession; and also for the prevention of further emigration to the Arkansas country under existing Treaties. In 1822 they were informed that a Commission was to be appointed by the United States, at the instance of the Governor and Legislature of Georgia, with a view of holding a Treaty with them (the Cherokees) for the purpose of extinguishing their title to lands within the chartered limits of Georgia; and the head chiefs of the nation requested the district judges to ascertain the opinions and sentiments of all the people upon the subject. These judges made their report to the National Committee and Council, which says, the people had declared "*unanimously, and with one voice and determination, to hold no Treaties with any Commissioners of the United States to make any cession of lands, being resolved not to dispose of even one foot of ground.*" On the 23d of October, 1822, the Committee and Council sanctioned this decision as follows, viz:

"*Be it therefore known and remembered, That we, the undersigned, members of the National Committee and Council, after maturely deliberating upon the subject, Resolve, &c., That the Chiefs of the Cherokee nation, will not meet any Commissioner of the United States to hold a Treaty with them on the subject of making cession of lands, the property of the Cherokee nation, as we are determined hereafter not to make any cession of lands, having not more than sufficient for our own nation and posterity.*"

In the year 1827, the Eastern Cherokees established a regular form of government, similar to that of the Western nation, and determined to maintain it in defiance of the violent opposition of the Governor and Legislature of Georgia. They passed a law pronouncing sentence of death upon any Cherokee who should propose or attempt to dispose of any lands belonging to the nation. Various other laws of a similar character were enacted, which plainly indicated that the cession of land, made by the Treaty of 1819, was the last the Eastern Cherokees would consent to. In the meantime, the legislature and people of Georgia were unceasing in their efforts to force the Indians from the lands within her limits. The United States had entered into a compact with that State on the 24th of April, 1802, by which the latter ceded to the former all that portion of territory which now forms the States of Mississippi and Alabama. The consideration to be given, on the part of the United States, was \$1,250,000, *with an obligation to extinguish the Indian title to all the lands within the limits of Georgia, whenever the same could be peaceably done, and on reasonable terms.*" This compact, with voluminous proceedings had, on its reference to Congress, in 1822, will be found in the 11th vol. Executive Doe. No. 1—2d ses. 17th Congress—and in the documents of several succeeding sessions. Georgia never ceased to insist upon, and to demand the fulfilment of that compact on the part of the United States, and to draw still tighter the cord of oppression around the Cherokees for the purpose of

forcing them to abandon the country. It would fill a volume to cite even the published proceedings upon this subject; and we will reserve a further exposition, until we come to investigate the causes which induced the organization of the "Treaty Party" among the Cherokees, and the conduct and downfall of that party.

Whilst the excitement was progressing and gaining strength in the east, and the Cherokees within the limits of Georgia were struggling to maintain their position, the people of Arkansas manifested a determination to extend their territorial limits—her citizens, about the year 1826, re-commenced their settlements upon the "Lovely purchase;" and in the year 1828 the Western Cherokees found an organized county, under the jurisdiction of Arkansas, on their western border. Thus, they were "*surrounded by a white population,*" contrary to the solemn promises to the contrary, repeatedly made by the Executive of the United States. The United States were anxious to avert the impending collision between the territory of Arkansas and these people—and it became necessary to induce them to relinquish part of the country secured to them by the Treaties of 1817 and 1819, and remove farther west. These considerations gave rise to the Treaty of 1828, by which the "Cherokee nation west of the Mississippi," ceded to the United States the surveyed portion of their country, being upwards of four millions of acres, with an additional strip from the "Lovely purchase," containing nearly a million more; and had the title "*guarantied to them,*" for another country, which was in fact only *part of their original outlet.*

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[*Treaty of 1828—A "Cherokee nation west of the Mississippi," fully recognized.*]

We solicit the earnest attention of the Executive and Congress to the form and conditions of this Treaty. It was concluded at the city of Washington, on the 6th of May, 1828, and the contracting parties are designated in its caption, as follows, viz:—"James Barbour, Secretary of War, being especially authorized therefor by the President of the United States, and the undersigned, Chiefs and head-men of the *Cherokee nation of Indians west of the Mississippi, they being duly authorised and empowered by THEIR NATION.*"

In our opinion the PARTIES to this Treaty are so clearly defined that it might be deemed unnecessary to proceed further to prove the identity and existence of the "Western Cherokees" as a separate and independent NATION, having no connexion with any other tribe. Language cannot be made stronger to establish this fact. By this Treaty we have the unqualified recognition, by the United States, of a *nation of Cherokee Indians west of the Mississippi, possessing full power and authority to CONVEY and RECEIVE title to a country!!* This NATION was the sole Indian party to the Treaty of 1828. The "*Cherokee nation east of the Mississippi*" had no voice in it, INDIVIDUALLY or as a NATION. What, then, were the objects and inducements which led to this compact, and what were its conditions?

The answer to the first part of this inquiry has already been partially given. At the period of this negotiation the Western Cherokees were in possession of a country, marked by boundary lines and estimated to contain about *four millions two hundred thousand acres*, with the promise of all the country west of it, for which they had already paid. This country was conveyed and secured to them by the Treaties of 1817 and 1819, as already shown. The preamble to the Treaty of 1828 avows the objects of both contracting parties, in bringing it into existence, so far as it was deemed necessary or politic to avow them. The United States professed to be governed solely by a desire to secure to the Western Cherokees, a permanent and unmolested home, during all future time, embracing a country large enough to subsist the people belonging to their nation, as well as such of their brethren in the east as might desire to join them. The Cherokee party in assigning their inducements, *do not join in the invitation to emigration, but maintain their claim to their present country*



and all the country lying west of it. In referring to the evil effects of remaining under the presence of a white population, and the degradation and misery resulting from it, they remind the United States' government of its *failure* or *inability* to comply with its previous solemn promises, in the following language:—"The Cherokees being anxious to avoid such consequences, and yet *not questioning their right to their lands in Arkansas, as secured to them by Treaty*, and resting upon the *pledges given by the President of the United States and the Secretary of War, of March, 1818, and 8th October, 1821, in regard to the out-let west, and as may be seen on referring to the records of the War Department,*" &c. These pledges assured the "Western Cherokees" that no white population should ever be placed on their western border—but they should have a *free* and an unmolested use of all the country west as far as the sovereignty of the United States extended.

Now, let us see what are the terms and considerations of this Treaty. The first article provides as follows, viz: "A line shall be run, commencing on Red river, at the point where the eastern Choctaw line strikes said river, and run due north with said line to the river Arkansas, thence in a direct line to the southwest corner of Missouri." Thus was the western boundary line of Arkansas established. The country, then ceded to the United States, which had been secured to the Western Cherokees under the Treaty of 1817 and 1819, laid upon the *east* side of that line. The *COUNTRY they received in exchange for this cession*, lies immediately upon the west of it; and is, in fact, only a portion of their own land, with part of the *OUTLET*, the unmolested use and possession of which had been virtually pledged to them by the United States before the treaty of 1817 was concluded—afterwards in the year 1818, and reiterated in the year 1821. It is conveyed to them by the 2d article of the Treaty, as follows:

"The United States agree to possess the Cherokees, and to guaranty it to them forever, and that guarantee is hereby solemnly pledged, of seven millions of acres of land, to be bounded as follows: [Here the boundaries are described, and the same article continues:] "In addition to the seven millions of acres thus provided for and bounded, the United States further guarantee to the Cherokee nation, *a perpetual outlet west, and a free and unmolested use of all the country lying west of the western boundary of the above described limits, and as far west as the sovereignty of the United States and their right of soil extends.*"

The 3d article of the same Treaty provides for running the lines of the above cession without delay, and also for the removal of all white persons from the ceded country, and to keep such persons "*with a population of any other sort, unacceptable to the Cherokees,*" from this country in future.

The 4th article provides for the appointment of agents to value the improvements left by the Cherokees in the country ceded to the United States, and for the sale of the agency property—the proceeds of which to be applied to the erection of a grist and saw mill for the use of the Cherokees, on the lands they were to receive in exchange for the lands they were surrendering to the United States.

The 5th article contains another positive, unequivocal, and absolute declaration, that the United States were then contracting with the "*Cherokee nation west of the Mississippi*" ONLY. It commences as follows: "It is further agreed that the United States, in consideration of the inconvenience and trouble attending the removal, and on account of the *reduced value of a great portion of the lands herein ceded to the Cherokees*, as compared with that of those in Arkansas, which were *made theirs by the Treaty of 1817, and convention of 1819*, will *pay to the Cherokees*, immediately after their removal, which shall be within *fourteen months* of the date of this agreement, the sum of fifty thousand dollars," &c. The article then provides for the appropriation of \$2,000 for three years, toward defraying the cost and trouble of recovering stock which might stray back after their remo-

val! Also, \$8,760, for "spoliations committed upon them, (the Cherokees,)" by the "Osages and citizens of the United States!" One thousand dollars for the use of Thomas Graves, a Cherokee, for losses and personal sufferings! Five hundred dollars for the use of George Guess, the inventor of the Cherokee alphabet! An annuity "of \$2,000 to the Cherokees for ten years, to be expended in the education of their children, in their own country, in letters and the mechanic arts!" And "one thousand dollars toward the purchase of a printing press and types."

The above article gives us the amount of what has been called *boot money*, to be paid by the United States to the "Cherokees," in this exchange of countries. Can a doubt arise as to who were intended to be designated by the appellation of "the Cherokees," so frequently mentioned in this article? There cannot. They were the people who owned "*the lands in Arkansas, made theirs by the Treaty of 1817 and the Convention of 1819!*" They were the people *then residing upon the Arkansas country*, and who agreed "to leave it within fourteen months," from and after the date of the Treaty! They were the people who had claims "for spoliations committed on them by the Osages and citizens of the United States," and were to "be paid for improvements they were about to abandon, and for the expenses of recovering their lost stock." They were *nationally and individually* the "*Cherokee nation of Indians west of the Mississippi*," who, under the name of "*an exchange of lands*," ceded to the United States the *eastern* portion of their country, conveyed to them by the Treaties of 1817 and of 1819, for, and in consideration of, *seven millions of acres*, to be surveyed and solemnly guaranteed to them *from a part of their own land and the outlet*, to which, long before this Treaty, they had acquired a title of unmolested occupancy! The United States agree to give these people "boot money" in the consummation of this bargain, assigning as a reason, that the country conveyed to the Cherokees was inferior in value to the country obtained from them in exchange! And this "boot money," as shown by the 5th article, amounts only to \$87,260, a considerable portion of which is to be paid to *individuals*, all of whom then resided upon the ceded land, and were constituents of the *nation west of the Mississippi river*.

The 6th article contains another consideration, on the part of the United States, which is highly important to the claim of the Western Cherokees for the lands conveyed to them by the Treaty of 1828. It is there agreed, that when the Cherokees "*may wish to lay off their lands and own them individually, a surveyor shall be sent to make the survey at the cost of the United States.*" Can any thing be adduced more clearly to establish the exclusive title of the Cherokees *then* in Arkansas, to the lands *then* secured to them? Surely not—for if they had chosen to avail themselves of the above stipulation, and have their lands surveyed, apportioned, and allotted to them *INDIVIDUALLY*, they might have done so immediately after the ratification of that Treaty; and thus a bar would have been forever placed against the assignment, even to *voluntary emigrants*, of any more public domain belonging to the *Cherokee nation!!!* And now comes the consideration paid by the *Cherokee party to the contract*, for the lands, money, and other benefits secured to them by the United States, in the several stipulations above cited. It forms the 7th article, and reads as follows:

"ART. 7. The Chiefs and head men of the *Cherokee nation aforesaid*, for, and in consideration of the foregoing stipulations and provisions, do hereby agree, in the name and behalf of *their nation*, to give up, and they do hereby surrender to the United States, and agree to leave the same within fourteen months, as hereinbefore stipulated, all the lands to which *they* are entitled to in Arkansas, and which were *secured to them* by the treaty of the 8th January 1817, and the convention of the 27th February, 1819."

The 8th article then provides for further emigration to the new country from the nation east of the Mississippi, which has been construed into an invitation extended to the *whole*

*eastern nation*, by those who have attempted to justify the outrages committed under the authority of the Treaty of 1835. The Western and Eastern Cherokees, however, always repudiated this construction, when the question was heretofore raised, and the article cannot be tortured so as to admit of any interpretation that would give emigrants to the Cherokee country any more rights or privileges than are guaranteed to foreigners, emigrating to this country, by the naturalization laws of the United States. The "Western Cherokee Nation" had secured a large and unembarrassed country, and it was willing to strengthen itself by emigrants from the parent nation, who might choose to join it—but not one foot of land is promised to emigrants by this article, either as a *gratuity* or a *grant*, warranted by the Treaty. All the *inducements to emigration are offered by the United States*; and even the promises they made were *suspended by our government* in June, 1833, and all the Cherokees who emigrated or were removed to the west, *after that period*, were removed under the provisions of the Treaty of 1835!!

But let us examine further into this subject, and ascertain the views and opinions entertained and publicly expressed by the nations *east* and *west*, in reference to the construction attempted to be placed upon the 8th article of the Treaty of 1828, soon after its ratification. We have already shown that this Treaty was forced upon the parties, by the demands of Georgia, which the government of the United States could no longer resist; and the determination manifested by the government and people of Arkansas to extend their territorial limits over and beyond a portion of the country assigned to the Western Cherokees by the Treaties of 1817 and 1819. It was, as we have said, in consequence of this unfortunate state of things that the invitation was inserted in the Treaty of 1828, to induce voluntary emigration to the west. The Cherokees, who lived within the limits of Georgia, were offered, not only "a good rifle, blanket, brass kettle and five pounds of tobacco," but each individual carrying with him four emigrants was also offered a bonus of *fifty dollars*—and they were further, to have all the expenses of their removal paid, and to be supplied one year after their removal, in the west. All this, however, was *offered by the United States*, and had but little effect in producing emigration. The Eastern Cherokees remained firm in their determination to adhere to the country of their ancestors, and the Western Cherokees protested against the reception of emigrants, under the clause of the Treaty above referred to, unless they brought with them their *proportionate share of their annuities* and secured an *additional quantity of land*, in proportion to the share they were entitled to in the east, under the provisions of the Treaty of 1817, and Convention of 1819. We will cite some of the numerous documents, explanatory of the intention and meaning of the Indian party to the compact of 1828, and also of the views entertained by the Eastern Cherokees upon the same question.

On the 1st of December, 1831, JOHN JOLLY, principal Chief of the Western Cherokees, addressed a letter to the President of the United States communicating the proceedings of a Council of his people, and the appointment of a delegation to visit Washington in reference to the provisions of the Treaty of 1828. The 1st and 2d clauses of the instructions to this delegation, direct them to "endeavor to have *secured to this nation* that portion of the annuity, which shall hereafter be sent and paid to this nation, *according to the proportion of emigrants which have arrived here since the last Treaty*," &c. And also to "secure to **THIS NATION** a proportion of any advantages which may hereafter accrue to the *old nation* according to the number of emigrants which may be *received in THIS NATION* since the Treaty of 1828." The 6th and last clause of these instructions reads as follows:—"The delegation are authorised to act in all things of interest to **THIS NATION** as they think best, in making and signing Treaties, and the same will be binding upon the nation—unless the same should extend to the *selling or exchanging land, or altering the lines of this nation, spe-*



*cified by the Treaty of 1828, all which is expressly forbidden.*" This paper will be found at page 276-7, in the 3d volume of Senate documents, No. 512, 1st session 23d Congress, numbered on the back of the volume "22" and "9," and designated in the title page, "Correspondence on the subject of the emigration of Indians, between the 30th November, 1831, and 27th December, 1833."

At page 275 of same document, will be found the letter of the delegation above referred to, addressed to the Secretary of War, and dated Washington city, March 26, 1832, making known the object of their visit. The delegation in this appeal speak boldly upon the rights of the Western Cherokees, as attempted to be interfered with under the terms of the Treaty of 1828. In speaking of the emigration produced by that Treaty, they say—"although the Treaty of 6th May, 1828, does not contain in it any stipulation guarantying to us any additional lands to that described in the second article, it is, nevertheless true, that while the negotiation was pending, which produced said Treaty, the government *made repeated promises to our brethren that their lands should be extended in proportion to the number that might emigrate.* Part of the delegation, to whom these promises were made, are now here, and are willing to testify to the fact. It must certainly appear reasonable and just that, unless a promise of this kind had been made, they would have refused to receive them into their country, and allow them to participate in the enjoyment of all those privileges which they had been possessed with under former stipulations without receiving, in some way, an equivalent!"

The above appeal was enforced in an argument possessed of much strength and eloquence, addressed to the Secretary of War by *John W. Flowers*, counsellor of the Western Cherokees, who was one of the signers of the Treaty of 1828; and in a similar one, addressed to Judge Martin, Wm. S. Coody, and John Ridge, delegates of the Eastern Cherokees, then in Washington. [Same vol. page 316, et. seq.] In anticipation of the application contained in the letter above cited, from the Western Delegation, Martin, Coody, and Ridge wrote to the Secretary of War on the 24th March, 1832, and there take the broad ground that the *Eastern nation* cannot, in any way, be affected by the Treaty of 1828, to which it was not a party. They say, in defence of their position, "we cannot believe that such proposition will meet the approbation of the government, taking into consideration the manner in which the emigration originated. By a Treaty *not made with our nation*, inducements are offered for the removal of the Eastern Cherokees to the Arkansas, and the government stipulates to pay for the *improvements* which they abandon. A small portion of our citizens under that arrangement, have emigrated, and a few more are about to emigrate; but taken altogether, they bear but a small proportion to the whole population remaining. [Same document, p. 274.]

The letter of *John W. Flowers*, addressed to the Eastern Delegation, is dated April 26, 1832. The reply to it is dated April 27, the next day, and is signed by Martin and Ridge, two of the delegates. Their answer is short, emphatic, and to the point. Two nations, separate and distinct from each other, are shown to exist among the Cherokees—the rights of neither of whom could be impaired by the acts of the other. In speaking of the wrongs complained of by the Western Cherokees, as inflicted by the emigration produced by the Treaty of 1828, the Eastern Delegation says: "This system of emigration has been adopted without the *consent*, and contrary to the *wishes of the NATION we have the honor to represent.* Therefore it is, that we cannot perform in this matter, any other act than to sympathise at the grievances of the *late emigrants*; and, if they have been, to their injury, inveigled to measures on the fair promises of the United States, it is to that *government* they are to look for justice! In regard to any misunderstanding as to the intentions of the United States and *YOUR NATION*, of the designs and bearings of the Treaty of 1828,

the proper explanations thereto, it is obvious, attaches to the CONTRACTING PARTIES!!  
[Same document, page 320.]

Various other acts of both nations, taken in connexion with the proceedings and correspondence arising thereon, between them and the United States, corroborate the foregoing declarations of the Cherokee Parties, and incontestibly prove that the Treaty of 1828, conveyed a country to the Western Nation *exclusively*. That nation protested against the reception of the emigrants from the Eastern Nation, then not exceeding two hundred, under its provisions, unless they procured an "*acquisition of lands*" and a "*proportionate share of the annuities, to which they were entitled in the East.*" The Eastern Nation protests against such arrangement, accruing under the provisions of a Treaty, "*to which it was not a party.*" JOHN RIDGE, who was afterwards the leading spirit in carrying into effect the Treaty of 1835, then declared that the Eastern Nation could do no more than "sympathize at the grievances" of the few who had left it under the provisions of the Treaty of 1828! If, then, it was not contemplated that *one or two hundred volunteer emigrants* from the East could be received, as equal owners of the country west, without paying an "*equivalent,*" it surely could not have been intended that the *WHOLE EASTERN NATION* could be placed upon it as joint owners with the Western Nation, as implied by the *preamble* to the 2d article of the Treaty of December 1835. It is worthy of observation, however, that *John Ridge* did not sign that Treaty! His name appears to the supplement agreed upon in Washington, on the 1st of March 1836, but not to the *original Treaty*.

We have done for the present, with the Treaty of 1828, which has been inhumanly used as a weapon to deprive the "Western Cherokee Nation," of a country. It was signed by eight Delegates, then in Washington, who are therein called "Chiefs of the Delegation;" among whom is JOHN ROGERS, who is now here, as one of the present Representatives of the old "Western Nation." It was ratified on the 28th day of May 1828, by the Senate of the United States, with a proviso that it should not be construed so as to interfere with any lands assigned to the Creek Nation or any other tribes of Indians by former Treaties. [See Treaty Book, page 422, *et. seq.*]

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[A brief explanation, shewing that the "Western Cherokee Nation," were entitled to *seven millions of acres of land* as a farming country, at the time the Treaty of 1828 was concluded. The causes that produced the Treaty of 1833, and the conditions of that compact, which confirms the title of the Western Cherokees to a country containing seven millions of acres, the boundaries of which are thereby permanently established—with a perpetual out-let west.]

Before we proceed to the examination of the Treaty of 1833, and ascertain the causes which led to it, we deem it proper, in order to avoid misapprehension, to offer a few words of explanation in reference to the apparent difference in the *quantity* of land assigned to the Cherokees west by the Treaties of 1817 and 1828. It will be recollected that the country of the Western Cherokees was bounded on the east, north and south, by the *Treaty of 1817*, and extended west for *quantity*—which country was supposed to contain *four million two hundred thousand acres*. In the year 1818 the country immediately on the west of this tract was purchased from the Osages: And in the year 1819 a large tract of country was relinquished by the Cherokees east of the Mississippi, in *addition to that ceded by the Treaty of 1817*, which was for the benefit of the Cherokees who had determined to join the Western Nation, and a tract of land, equal in extent to that last relinquished in the *east*, was to be added to the country in the *west*, as surveyed under the Treaty of 1817! It must also be remembered that a considerable tract of country lies between the *western* boundary of the Cherokees, as contemplated by the Treaty of 1817, and their *eastern* line as now established.



Their *eastern* boundary was fixed by the Treaty of 1817, but the *western* boundary was not run. It was intended however to extend it to the Osage line, which struck the Arkansas river at Frog Bayou. This line as settled by the Osage Treaties of 1808 and 1818, runs a directly *north* and *south* course, from old Fort Clark on the Missouri, five miles above Fire Prairie, and strikes the Arkansas at Frog Bayou. The distance, in a direct *east* and *west* course, from this point on the Arkansas to the eastern line of the Cherokee Nation, at Fort Smith, as established by the Treaty of 1828, is thirteen miles. The distance between the Arkansas river and Missouri line, at the nearest point between the lines above designated, is seventy-seven miles. This large and valuable tract of land, therefore, was relinquished to the United States, by that Treaty, in addition to the country lying *east* of it, and *west* of the line designated by the Treaty of 1817! And it was then, in 1828, ascertained and believed that the whole country relinquished by the "Western Cherokees," in Arkansas, would amount to *seven millions of acres!* But whether it would do so or not is immaterial to the present issue. The exchange of lands was made by Treaty without allusion to the number of acres relinquished by the Cherokee party to the bargain. Reference is made to the *inferior quality* of the country given in exchange to these people for their lands in Arkansas, and if an additional *quantity* was pretended to be given to them, the inference is plain that it was intended to make up for the difference in the value of the two countries—as the "BOOT MONEY" given to them on their *national account*, by the 5th article, would have added but a fraction more than one cent per acre!!!

There is an important fact connected with the extinguishment of the Indian title to all the lands within the state of Arkansas on the north of the Arkansas river, of part of Missouri, and the whole of the present Cherokee country, which we desire to bring before the government. It will be seen that the desire of a portion of the Cherokee nation to remove west, procured that relinquishment at a price merely nominal. In the year 1808 the Cherokees made their first practical attempt to procure a country west, and in the autumn of that year deputations visited Washington for that purpose. As we have already shewn, in October of the same year, a Treaty was made with the Osages, by which the following extensive tract of country was ceded to the United States, viz:—"Beginning at Fort Clark on the Missouri, five miles above Fire Prairie, and running thence a due south course to the river Arkansas and down the same to the *Mississippi*, hereby ceding and relinquishing forever to the U. S. all the lands which lie *east* of said line, and *north* of the southwardly bank of the said Arkansas river, and all lands situated *northwardly* of the Missouri river!!!" Mark the dates! In January 1809, President Jefferson made a promise to the Cherokees of part of these lands in exchange for the country east, and authorized an exploring party to go and examine them. The Osage Treaty was then ratified by the Senate on the 10th of April 1810! In March 1818, upon the complaints of the Cherokees, the promise was formally made to them of an extension of their country west, with the "out-let"—and on the 25th September of that year, another Treaty was made with the Osages, by which their title to all that portion of their country was extinguished, known as the "Lovely purchase." Again—on the 2d June, 1825, another Treaty was made with the Osages, by which all their lands west of the Cherokee country were ceded, and this cleared the way for the *out-let* which was guaranteed to the Western Cherokees by the Treaty of 1828.

Thus it will be seen, that every purchase of lands from the Osage Tribe was predicated upon a contemplated cession to the "*Western Cherokee Nation*," in payment for the lands relinquished by them east of the Mississippi! The Treaties with the Quapaws, by which that Tribe relinquished its title to lands on both sides of Arkansas river, were concluded in August 1818, and November 1824. But these lands did not extend as far west as the Cherokee country.



[*The Treaty of 1833 between the United States and the "Cherokee nation west of the Mississippi."*—It conveys a country to that nation, by the United States, for a valuable consideration paid.—That Treaty has never been annulled or changed by the contracting parties, and the ceded country now belongs to that nation, under the guaranty then given by the United States.]

We will now examine the provisions of the Treaty of February, 1833. The preamble quotes the 2nd article of the Treaty of the 6th May, 1828, and also the amendment made to that Treaty by the Senate, restricting the boundaries of the country conveyed to the Cherokees, to a non-interference with any lands which had been previously assigned to the Creek Indians. It also alleges that certain encroachments had been committed by these people upon the lands of each other; and for the purpose of settling these difficulties in an amicable manner, and permanently establishing the boundaries of the Cherokee and Creek countries, Treaties were concluded with both nations on the same day, *to wit*: the 14th February 1833. [See Treaty Book, page 561, *et seq.*]

Soon after the Western Cherokees settled in their new country under the provisions of the Treaty of 1828, it was found that the boundaries agreed upon did interfere with some lands claimed by the Creek Indians; and complaints were made by both parties, charging encroachments upon the lands of each other. In consequence of these complaints three Commissioners were appointed in the year 1832, to examine and adjust these difficulties, and settle permanently the boundaries of both countries. A Treaty was concluded between these Commissioners and the "Cherokee Nation West" at Fort Gibson, on the 14th day of February 1833—and this is the last Treaty to which the Western Cherokees are a party!! They have never ceased to reject any and every arrangement entered into between the United States and other Cherokees, affecting the rights and interests guarantied to them by its provisions. This Treaty again distinguishes the parties contracting, as "Commissioners on the part of the United States, and the Chiefs and head men of the Cherokee NATION WEST OF THE MISSISSIPPI, they being duly authorized and empowered by their NATION."

The preamble to this Treaty, after stating that the Creeks and Cherokees had met in Council and mutually agreed upon their boundary lines, introduces the first article as follows:—"Now, therefore, the United States, on the *one part*, and the Chiefs and head men of the CHEROKEE NATION OF INDIANS WEST OF THE MISSISSIPPI, on the *other part*, agree as follows:—

"Art. 1. The United States agree to possess the Cherokees, and to guaranty to them forever, and that guaranty is hereby pledged, of seven millions of aeres of land, to be bounded as follows:" [Here the boundary lines are described, and the outlet secured under the guaranty of the Treaty of 1828, in addition to the 7,000,000 of aeres.] And the article concludes with the following solemn promise made on behalf of the United States: "*And LETTERS PATENT shall be issued by the United States as soon as practicable for the land hereby guarantied.*"

The 2nd Article relinquishes to the United States all the lands ceded to the Western Cherokees by the Treaty of 1828, not embraced within the boundaries fixed in this Treaty, which is called "supplementary" to the former. Several other important changes are made, varying the provisions of the Treaty of 1828, but the *contracting parties* are maintained throughout, as the "*United States and the Cherokee Nation west of the Mississippi.*" The Treaty was ratified on the 12th day of April. 1834, and on that day became a supreme law of the land. *It has never since been annulled or altered by any act to which the "Cherokee Nation of Indians west of the Mississippi" was a party.*

The signers to it, on the part of the Cherokees, are "*John Jolly, Black Coat and Walter Webber, principal chiefs,*" and "*John Rogers, President Committee, and Glass, President Council.*" The three chiefs elected as one *Principal* and two *assistant chiefs*, constituted the Executive branch of the Cherokee Government west of the Mississippi. The Commit-

tee and Council constituted the two branches of the National Legislature. Here then, again, *in their new country*, did the exclusive power and authority of the *Western Cherokee Nation* manifest itself. The *boundaries of a country* were agreed upon, and secured to them forever. The Eastern Nation had no Representative present, even to witness this important transaction. Their people had no part in any of the negotiations, by which the Western Cherokees acquired this country, and manifested no interest with regard to the result. Their rights and interests could not be *injured* by any arrangement made by the Treaty of 1828, or that of 1833; and hence it is folly to say that they could be entitled to any of the *benefits* resulting from them, at the expense of the Western Cherokees.

The three chiefs, Jolly, Black Coat and Webber, who signed this Treaty on behalf of their nation, were among the first settlers in the old nation in Arkansas. They are no more. Glass, who signed the Treaty as President of the Council, is also dead—and John Rogers, who signed it as President of the Committee, is the only surviving signer of that compact. He is now in this city as one of the Delegation, appointed by the scattered and broken down remnants of the old Western Cherokee Nation, for the purpose of establishing their exclusive right to the country secured to them by the various Treaty stipulations cited in this narrative; the boundaries of which are definitely and permanently established by the Treaty of 1833.

We beseech the President of the United States, and the Representatives of the people, whose duty it is to preserve inviolate our Treaty stipulations, to examine carefully the conditions of this Treaty. It was concluded to be sure with an Indian nation, and such compacts have heretofore been sneered at as official lullabys sung to ignorant savages, by those whom law and custom had made their guardians. But that day, we trust, has passed forever. Indian Treaties are deserving of as much consideration from us as Treaties concluded with any other nations upon earth. They are made in pursuance of law, sanctioned by the Constitution of the United States. They are entered into in the same manner, and pass through the same solemnity of form, in their ratification by the President and Senate of the United States, as do Treaties negotiated with nations more civilized, though not more virtuous. The Treaty of 1833 was thus negotiated and ratified, and we say to those who have the power to control our destinies, [against our will, if they choose to exercise force,] to examine well its stipulations, and then seriously answer this question: DOES NOT THAT TREATY SECURE AS GOOD A TITLE TO THE “CHEROKEE NATION WEST OF THE MISSISSIPPI,” BY THE UNITED STATES, AS WAS SECURED TO THE UNITED STATES BY FRANCE IN THE TREATY MADE FOR THE PURCHASE OF LOUISIANA? Let it be borne in mind that the Cherokees were not the aboriginal settlers upon the country, the title to which was now guarantied to them! They had purchased it *from the United States*, and paid full value for it!

The Treaty concluded with the Creek nation on the same day, furnishes important testimony for the Cherokees. The second article of that Treaty, fixing the boundary lines of the nation, commences thus:—“The United States hereby agree, *by and with the consent of the Creek and Cherokee delegates*, this day obtained, that the Muscogee or Creek country west of the Mississippi, shall be bounded as follows: [Here follows a description of the boundaries of the Creek nation, as they now exist.] And now to show the distinction between the Cherokee and Creek owners of the countries, for which they were then fixing the boundary lines, we refer to the 4th article of the Treaty made by the latter, which reads as follows:—“It is hereby mutually understood and agreed between the contracting parties to this Treaty, that the land assigned to the Muscogee Indians, by the 2d article thereof, shall be taken and considered as the *property of the whole Muscogee or*



*Creek nation*, as well those now residing upon the land, as the great body of said nation who still remain upon the east side of the Mississippi river." No such provision was inserted or could be introduced into the Cherokee Treaty!!! That Treaty conveys the title, absolutely and without reservation, to the CHEROKEE NATION, then *owners and occupants of the country*. It was ratified by the President and Senate of the United States on the 21st day of April, 1834. What, then, was the character and condition of the Indian party to it? We place the answer under the following heads, viz:

1st. It was the "*Cherokee nation of Indians west of the Mississippi*," organized under the provisions of the Treaty of 1817.

2d. By the Treaty of 1819, concluded between the Eastern Cherokees and the United States, for the purpose of finally settling some important questions left undetermined by the Treaty of 1817, this western nation obtained, by a partition of the country originally held by the whole tribe, the right to ONE-THIRD of the country and one-THIRD of the annuities or national funds belonging to the old nation anterior to the Treaty last referred to. The share of country allotted to the Western Cherokees by this deed of partition, was exchanged by them for a country west of the Mississippi river, which was marked by boundary lines.

3d. In the year 1828, the country acquired as above stated was ceded to the United States by the Cherokees owners, who obtained in payment therefor a country still further west, containing *seven millions of acres*, described by metes and bounds, with a perpetual outlet west as far as the *sovereignty of the United States and their right of soil extend*.

4th. In the year 1833, by another Treaty concluded between the same parties, for the purpose of definitely and permanently establishing certain boundary lines, the above cession, with a slight change in these lines, was *confirmed*; and letters patent were promised by the United States for the country thus conveyed, as follows: "*And letters patent shall be issued by the United States for the land hereby guaranteed.*"

Thus have we portrayed the condition of the "*Cherokee nation of Indians west of the Mississippi*," on the 12th day of April, 1834. Their TITLE to the entire country above designated, was on that day solemnly ratified and confirmed. Not a link in the whole chain was found broken or out of place—not one has ever since been broken or impaired by any act of the "Western Cherokees;" and these people are this day the rightful owners of that country, under any rule, either of law or equity, which can be applied to contest that title. But it is in relation to their condition in 1834 we intend to speak at present. Look at the picture they then presented. After more than a quarter of a century's toil and privation, they had secured the absolute title to a large, fertile, valuable country, with a healthy and delightful climate. They had purchased and paid for this country to the United States, whose warranty was given to protect them in it forever. They had already cultivated large farms and built comfortable houses. Their farms were well stocked with horses, cattle, and useful domestic animals of every kind. They were, in truth, an industrious, thrifty and well-provided people, whose civilization, industrious habits, general intelligence, and prosperous appearance, placed them upon an equality, in all these respects, with the settlers upon any new country on earth. They were at peace and harmony among themselves, and with their white neighbors. The stranger who visited them or passed through their country, had the hand of friendship and hospitality extended to him.

This was the condition and appearance presented by the "Western Cherokee nation," now called "Old Settlers," when they were despoiled of their country, under the operation of the Treaty of 1835.



[*A brief review of some of the leading points in the foregoing history.—Showing the estimation in which the title of Indians to their lands was held by the British crown, and afterwards by this Government.—The mode by which the title can be extinguished.—Bringing our narrative to the Treaty of 1835.*]

There is one universally acknowledged principle which recognises but two ways of acquiring from the Indians a title to their lands—that is, by PURCHASE, under the constitution and laws, or by FORCE. The latter was never resorted to by the British government; but, on the contrary, a title in the Indians was recognised and held sacred by the British crown, up to the war of the revolution. As late as the year 1763, the King of England issued a proclamation concerning the rights and immunities of the American Indians, from which we will make one or two extracts. They read as follows:

“Whereas it is just and reasonable, and essential to our interests, that the several nations or tribes of Indians, with whom we are connected, and who live under our protection, should not be molested or disturbed in the possession of such parts of our dominions and territories as, *not having been ceded or purchased by us*, are reserved to them as their hunting grounds: We do therefore declare it to be our royal will and pleasure, that *no governor of any of our colonies*, do presume, for the present, and until our further pleasure be known, to grant warrants of survey, or pass patents, for any lands whatever, which, not having been ceded to, and purchased by us, as aforesaid, are reserved to the said Indians, or any of them.”

The next clause of the proclamation asserts the same principle in reference to the rights of the Indians, which was afterwards adopted by our government, and embraced in the intercourse law of 1802. It ordains as follows:

“To the end that the Indians may be convinced of our justice, and determined resolution to remove all reasonable causes of discontent, we do, with the advice of our privy council, strictly enjoin and require that no private person do presume to make any purchase from the said Indians; but that if, at any time, any of said Indians should be inclined to *dispose of their said lands*, the same shall be purchased only for us, and in our name, at some public meeting or assembly of the said Indians, to be held for that purpose by the governor of our colony within which they shall lie.”

In the condition above indicated we found the Indians at the time we became an independent nation, as England's conqueror. The Indian question was then one of great importance to the infant republic; and “Treaties of peace and amity” between our government and the several tribes of Indians were early negotiated. The fourth Indian Treaty upon record, and the *first* negotiated with the Cherokees, was concluded in November, 1785, at Hopewell, on the Kenowee. It was done at the termination of a protracted and bloody war; and the first and second articles provide for a restoration of prisoners, and negroes, and other property taken during the war, by either of the contracting parties. The fourth article designates the boundaries of the Cherokee country. The fifth article provides for the prevention of *white settlements upon their lands*, and for the *removal* of any who may be already settled there. The sixth and seventh articles contain further promises and guarantees to the Cherokees, that they shall be secure in the occupancy of their lands. The ninth article reads as follows: “For the *benefit and comfort* of the Indians, and for the prevention of injuries and oppressions on the part of the citizens or Indians, the United States in Congress assembled, shall have the whole and exclusive right of regulating the trade with the Indians, and managing all their affairs, in such a manner as they think proper!” We wish this article to be distinctly marked for future comment. It is the first concession on the part of the Cherokees to the United States, obtained *sixty years* ago, under the specious declaration of the then victorious party, that the right conceded was “for

the *benefit and comfort* of the Indians, and for the prevention of *injuries and oppressions!*" The twelfth article of the *same* Treaty is in the following words: "That the Indians may have full confidence in the justice of the United States respecting their interests, they shall have the right to send a *deputy to Congress!*"

The second Treaty was negotiated with the Cherokees, on the banks of the Holston, in July, 1791—the second article of which secures their pledge to the United States that they "will not hold any Treaty with any *foreign power, individual State*, or individuals of any State." The 4th article extinguishes the Indian title to the lands beyond certain designated limits; recognises and permanently fixes the boundary lines between the United States and Cherokees, and stipulates as follows:

"In order to preclude forever all disputes relative to the said boundary, the same shall be ascertained, and marked plainly, by three persons appointed on the part of the United States, and three Cherokees on the part of their nation."

After this cession and agreement upon the establishment of permanent boundaries between the parties, we find the following solemn pledge on behalf of the United States:

"ART. 7. The UNITED STATES *solemnly guaranty to the CHEROKEE NATION all their lands not hereby ceded!!!*"

"ART. 8. If any citizen of the United States, or other person, not being an Indian, shall settle on any of the Cherokee lands, such person shall forfeit the protection of the United States, and the Cherokees may punish him or not, as they please!!!"

This Treaty contains altogether fifteen articles, recognising, in letter and spirit, the *Cherokee nation* as in possession of the title of original occupancy, which cannot be infringed upon by any State in the Union, or by the United States government itself, unless by Treaty or Convention entered into pursuant to the Constitution. The Treaty was ratified by the President and Senate of the United States on the 11th November, 1791; and the guaranty of title it contains had never been repealed or annulled, but was in existence in the year 1835, when the New Echota Treaty was concluded! After the Treaty of Holston, twelve other Treaties were negotiated between the United States and the Cherokee nation east of the Mississippi, *prior* to the Treaty of 1835—nearly all of which take an "*additional slip of land from the Indians*," but contain the same *everlasting* guaranty for the residue. Some of these Treaties are worth presenting to the public eye; but for want of space, we shall pass over them at this time, and come to the one immediately preceding that of New Echota. This Treaty, or Convention, was concluded at the city of Washington in the year 1819, between the Secretary of War [Mr Calhoun,] on behalf of the United States, and the Cherokee nation east of the Mississippi river. It is a final adjustment of the conditions of the Treaty of 1817, by which the old Cherokee nation agreed to separate, and become two distinct and several nations, to be afterwards designated as the "*Cherokee nation east of the Mississippi*," and the "*Cherokee nation west of the Mississippi river*." The Treaty of 1817 was negotiated with the whole original nation, and made a large cession of land in exchange for the land to be given to the western Cherokees in Arkansas. The Convention of 1819 was negotiated with the eastern nation alone, by which more land is ceded to the United States, and an arrangement entered into for their permanent occupation of their remaining country, as cultivators of the soil, under the solemn guaranty pledged by the Treaty of 1791. In this Treaty, all the unsettled business of the Cherokees is discussed and settled; and the United States bind themselves to fulfil the compact, in the following clear and emphatic manner:

"ART. 5. It is agreed that such boundary lines as may be necessary to designate the lands

ceded by the 1st article of this Treaty, may be run by a commissioner or commissioners, to be appointed by the President of the United States, who shall be accompanied by such commissioners as the Cherokees may appoint, due notice thereof to be given to the nation; and that the leases which have been made under the Treaty of the 8th of July, 1817, of land lying within the portion of country reserved to the Cherokees, to be void; and that all white people who have intruded, or may *hereafter intrude*, on the lands reserved for the Cherokees, shall be *removed by the United States*, and proceeded against according to the provisions of the act passed 30th March, 1802, entitled 'An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers.' "

We wish it distinctly to be borne in mind, that the Treaty of 1819, just cited, was the last Treaty concluded between the United States and the Cherokee nation east, until the completion of the celebrated Treaty of 1835-6; and that it stood upon your statute-book as the supreme law of the land up to that period. Every other Treaty stipulation we have quoted, remained at that time unrepealed and unaltered. The provisions of the intercourse law of 1802, referred to in the 5th article of the Treaty of 1819, were still in existence, as incorporated in the law of 1834. Up to the passage of the last mentioned law, the act of 1802 was the standard law "regulating our trade and intercourse with the Indian tribes," and its provisions were not altered or amended, or its words changed, on any subject we propose to discuss. Section 12th of this law provides as follows:

"That no purchase, grant, lease, or other conveyance of lands, or any other title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by *treaty or convention entered into pursuant to the constitution.*"

Another clause of the same section makes it a penal offence in any person, not employed by the United States, to attempt to negotiate such Treaties, and as if Congress, at an early period, anticipated the assumption and exercise of improper power thereafter by the States, the same section of the law is made to contain the following proviso:

"That it may be lawful for the agent or agents of any State, who may be present at *any Treaty held with the Indians, under authority of the United States, in the presence and with the approbation of the Commissioners of the United States appointed to hold the same*, to propose to, and adjust with, the Indians, the compensation to be made for their claim to lands within such State, *to be extinguished by Treaty!*"

We solicit especial attention to this provision of the intercourse law, as the conduct of several of the States, which was not only tamely but criminally overlooked by the government of the United States, inflicted many of the evils complained of by the Cherokees, long anterior to the Treaty of 1835; and has produced distraction and hatred among these people, to allay which time has battled in vain; and which can only be allayed by the strong arm of this government, holding the scales of JUSTICE in its hand. We also ask that the positive prohibition contained in the second article of the Treaty of 1791, against the Cherokees holding Treaties with "any individual State," may be considered, with the provisions of the intercourse law; and then refer back to the King of England's proclamation, which we have quoted, wherein he proclaims as follows: "We, therefore, declare it to be our royal will and pleasure, that no *governor of any of our colonies* do presume to grant warrants of survey, or pass patents for any lands, &c., which, not having been ceded to, or purchased by us, as aforesaid, are reserved to the said Indians, or any of them."

We have now, in as brief a manner as possible, to be understood, presented the condition of the Cherokees from the time they were under British dominion, up to the Treaty of 1835, so far as their rights were concerned, under law and treaty stipulations. The proclamation of the King shows in what estimation those rights were held by the English crown;



and the early manifestations of our chief magistrates and law-makers, as shown by the law and treaty stipulations we have quoted, exhibit a fixed determination to protect the Indians in their rights. The intercourse law, under which all our Indian Treaties have been made, and the Treaties with the Cherokees, by which their title to the country they occupied was recognised and established, were enacted and concluded early in our national existence. They were ordinances and compacts entered into when our relations with the Indians, found in possession of millions of the choicest acres of the conquered country, were fresh and exciting; and the intentions of our government and people towards them were pure, kind, and disinterested. The Indian title was then held sacred, and the mode was prescribed by which alone it could be extinguished. With regard to the Indians generally, this was done; and their persons and property protected by an act of the National legislature; but with the Cherokees, there were special agreements made in this respect, in their Treaty compacts, and their title to the lands reserved to them, solemnly "guarantied to their people forever."

We have now come to the threshold of the Cherokee Treaty of 1835, with all the provisions of the several previous treaties, holding up the solemn guarantee from the United States to the Cherokees, that they shall be protected in the title to their lands *forever*, and that no "*individual State, or individuals of a State*, shall molest them, or intrude upon their territory!" These provisions were in full force when Commissioners were sent to negotiate the Treaty of 1835. In what condition were the Cherokees found at that time? Why, the United States had failed to make good its guarantee in every respect. The Cherokee country was swarming with intruders, inflicting every species of persecution upon the Indians. Georgia had long previously disregarded the existing Treaties between the United States and the Cherokees, and asserted the right to jurisdiction over, and to the actual possession by her citizens of, all the lands secured to the Cherokees by Treaty, lying within the chartered limits of that State. In the year 1822, she set at defiance the provisions of the Treaty of 1817 and 1819, granting reservation to certain Cherokees. Under an act of the State, she caused these reservations, then in the occupancy of the reservees, to be laid out in lots, and drawn for by lottery, by her own citizens. In this way, all the Cherokees who obtained reservations under Treaty stipulations, in the State of Georgia were forcibly ejected. By another act of the Legislature of that State, passed in December, 1829, the jurisdiction of her State courts was extended over the whole country occupied by the Cherokees within her limits; and in June, 1830, the laws, customs, and usages of the Cherokee nation were declared inoperative, null and void. In the same year the legislature further enacted, that the whole country occupied by the Cherokees, within the boundaries claimed as the chartered limits of the State, should be surveyed, and distributed among her citizens. Thus were the Cherokees harassed and perplexed, compelled to employ counsel, and enter into the most vexatious law-suits—the United States all the while remaining passive spectators of the unrighteous contest, and suffering their most sacred Treaty obligations to be violated. At length, even the legal redress resorted to by the Cherokees was taken from them, by the enactment of a law by the legislature, prohibiting the courts of Georgia from holding jurisdiction over, or take cognizance of, any case wherein a citizen of the Cherokee nation was a party.

We ask the President of the United States—we ask every man of feeling and just conceptions in the United States to look at this picture. You have read the description given by your historian (Bancroft) of the Cherokees and their country, when first seen by the white man. You have read the various Treaty stipulations, by which their country was purchased from them, section by section, and the ready guarantee given for the residue,

until they parted with the last acre they could spare, as an agricultural people, by the Treaty of 1819. Now listen to what the Commissioner sent to negotiate with them in 1835, for the last remnant of their country, has to say, for the purpose of inducing them to entirely abandon the home of their fathers. Instead of saying to them, "You have entered into numerous Treaty compacts with the United States, by which you have ceded millions of acres of your choicest lands! You have complied with your part of these compacts, by a prompt relinquishment of these lands to the purchaser! We will now faithfully, if it has been tardily done, comply with our part of the several compact, or if we have not the power to do so, without violating our faith pledged to the States, we will make you ample remuneration." Instead of thus addressing the Cherokees, we say, Mr. Commissioner Schermerhorn, in his celebrated talk to the Council convened at Running Water council-ground, on the 20th of July, 1835, after reading to them a draft of a Treaty already prepared, and urging the futility of a refusal of the terms proposed, warns them against such a refusal as follows:

"And now, let me ask you, what have you to gain by delaying this matter? Certainly, nothing. You have tried various ways, for several years past, and every year your situation has been growing worse and worse. Every overture for negotiation that has been rejected by you, and every exertion on your part to be reinstated into your former rights and privileges, and to expel the whites from among you, and to escape the force of the laws of the States over you, has not only failed to bring you the relief promised you by your lawyers, and counsellors, and chiefs; but it has been followed by more new and insupportable laws and measures. Your principal men have all been turned out of their possessions, or have become tenants at will to the citizens of Georgia. If you continue to cast away the very liberal and generous offers of the government now made to you, you will even lose the sympathies of some of your best friends. You cannot mistake the policy of Georgia. She is determined to get rid of her Indian population, and she will soon legislate you out of the country, by granting your possessions to her citizens, who claim the *fee* of your lands. And then where will you go? To Alabama or Tennessee? You know the whites there are as thick on your lands as they are in Georgia; and all places surrounded by the emigrants are occupied by white men, as they have been in Georgia. You need not be surprised if, in such a case, the other States were to pass laws that they would not permit the Indians from Georgia to settle within their bounds. Be not deceived. The citizens of the States of Alabama, Tennessee, and North Carolina, are as anxious to get rid of you as Georgia; and they lie still, and hold back, because Georgia is fighting *their* battles, as well as her own, with you; and this you will find, when the crisis arrives to which I have alluded; for they have, all of them, already extended their laws over you. Let me say to you, these evils are now at the door. If you reject these overtures, you may look for them soon."

This is an extract, and fair sample of the opening *talk* of the Commissioner sent in the year 1835 by our government to treat with the Cherokees for a relinquishment of all their lands east of the Mississippi river. The "*benefit and comfort of the Indians*," and the promise to protect them from "*injuries and oppressions*," so paternally made in the year 1785, when our young government obtained, by Treaty, the first foothold upon Cherokee lands, were lost in the mist of time—entirely forgotten. The Cherokees were now told that the United States was unable to protect them as she had stipulated in her Treaties; and that their only safety was in the entire abandonment of the country. Some of the Chiefs, and best and purest men of the country, who had buffeted with their oppressors for years, seeing the awful precipice upon which they stood, and, judging from the past and the present, that relief was out of the question, agreed to sell their country. Another, and the largest portion of the people, composed of some men equally good, still clinging to the belief that some good angel would come to the rescue, absolutely refused to part with it. But



the colossal power of this government prevailed; and a Treaty was concluded with the minority party on the 29th day of December, 1835, by which the last Indian of the Cherokee tribe east of the Mississippi was stripped of his birthright.

[*A minute enquiry into the provisions of the Treaty of 1835.—Was the country East purchased for money, or was an EXCHANGE OF LANDS also contemplated?—Can the Eastern Cherokees claim any title to the country West, except the 800,000 acres conveyed to them by the Treaty of 1835?*]

It now becomes our duty to show how the "Cherokee nation of Indians west of the Mississippi," became dispossessed of the country solemnly guaranteed to them by a Treaty ratified in the Constitutional form by the President and Senate of the United States.

On the 29th of December, 1835, after a long and tedious negotiation, a Treaty was concluded between the United States and the Cherokees east of the Mississippi, at New Echota, Georgia, by which the United States obtained possession of all the lands owned by that nation; in consideration the United States agreed to pay, as *the full value* of the same, five millions of dollars. This value was fixed by a resolution of the Senate of the United States, under a proposition submitted to that body by JOHN ROSS, and other members of a Cherokee delegation, on the 28th of February, 1835, as will be seen by reference to the preamble to this Treaty, [Treaty Book, page 633.] The first article then makes the cession as follows:—"The Cherokee nation hereby cede, relinquish and convey to the United States *all the lands owned, claimed or possessed by them east of the Mississippi river*, and hereby release all their claims upon the United States for spoliation of every kind *for and in consideration of the sum of five millions of dollars*," &c. The same article then raises a question as to whether the Senate intended to include the payment of "spoliation" out of the Cherokee fund, when they advised "that a sum not exceeding five millions of dollars be paid to the Cherokee Indians, for all their lands and possessions east of the Mississippi river." This question is settled by the 2d and 3d articles of the supplement to the Treaty concluded at Washington on the 1st day of March, 1836—[Treaty book, p. 646-7.] It is here declared that the *five millions of dollars* awarded by the Senate, was intended as the value of the lands ceded by the Cherokees, and was not subject to the payments entailed upon that fund by the first article of the original Treaty. One fact is here clearly established, which is highly important in the settlement of conflicting interests involved in the reference of this question at present. It is here shewn that both contracting parties considered the *five millions of dollars as the full price to be paid for the country of the Cherokees on the east of the Mississippi river!!* that this was a *purchase and sale*, and the consideration was fixed, first by the Senate and afterwards agreed upon between the contracting parties. When this consideration, which was \$5,000,000, was paid by the United States, they could claim *an acquittance in full* on account of the purchase of the Cherokee lands east of the Mississippi. The country belonging to the Western Cherokees, described in the 2d article of this Treaty, therefore, forms no part of the *CONSIDERATION* involved in this *sale and purchase!!* Such assumption is not implied even by the article itself. Let us examine it:

"ART. 2. Whereas by the Treaty of May 6, 1828, and the supplementary Treaty thereto of February 14, 1833, with the *Cherokees west of the Mississippi*, the United States guaranteed and secured to be conveyed by patent to the Cherokee nation of Indians, the following tract of country: [Here the boundaries of the cession made to the Western Cherokees, by the Treaty of 1833, are quoted as described in that Treaty.] Immediately following this description of the boundaries of the country, *in which neither of the contracting parties had any interest*, the Cherokee party are made to say, "*it is apprehended by the Cherokees that in the above*



cession there is not contained a sufficient quantity of land for the accommodation of the *whole nation* on their removal west of the Mississippi, the United States, in consideration of the sum of *five hundred thousand dollars*, therefore hereby covenant and agree to convey to the said Indians and their descendants, by patent in *fee simple*, the following additional tract of land, &c. "which tract is estimated to contain eight hundred thousand acres."

The 3d articles then stipulates on the part of the United States as follows: "The United States also agree that the lands above ceded by the Treaty of February 14, 1833, including the outlet and *those ceded by this Treaty*, shall be included in one patent, executed to the Cherokee nation of Indians by the President of the United States, according to the provisions of the act of May 28, 1830." Is not this a most singular proceeding? Here are two parties disposing of a country in which neither had one *iota* of interest! The Eastern Cherokees had separated from the Western Cherokees, and divided the common property by the Treaty of 1817 and Convention of 1819, and therefore DID NOT presume to have a claim upon the country west of the Mississippi. The United States parted with all their interest in this country by the Treaty 1828, when they received for it a country in exchange within the limits of Arkansas; and by the Treaty of 1833, which permanently established the boundary lines of the country, then assigned and guaranteed forever to the "Cherokee nation west of the Mississippi river, for which a patent was to be issued as soon as practicable." If there was deception or fraud intended to be perpetrated by the transfer of land under the Treaty of 1835, the participation in it by the parties to that Treaty was mutual; for both knew that they had no title to or interest in the country belonging to the Cherokees west of the Mississippi, which was here disposed of as belonging to the nation east, as well as to the nation west, of that river.

The Cherokee nation east of the Mississippi river do not, therefore, under the provisions of the Treaty of 1835, present any legal or equitable claim to the country west of the Mississippi, which they now occupy. That country was not given to them as part of the consideration to be paid for the country they relinquished to the United States by that Treaty. The only land they acquired a legal or equitable title to under its provisions, is the 800,000 acres, for which they agreed to pay, and did pay, *five hundred thousand dollars*. There could not have been an *exchange of lands* contemplated by the Treaty of 1835, for the Cherokees, headed by JOHN ROSS, principal Chief, agreed to receive the value of *their* lands east in money; and for the only lands legally conveyed to *them* by the United States on the west side of the Mississippi, they were afterwards charged \$500,000! The act of Congress of May, 1830, under which the title is promised by the 3d article of this Treaty, only confers the power upon the President to effect an "EXCHANGE of lands with the Indians east of the Mississippi river for lands west of that river." It does not confer the power to purchase with money. If the Treaty of 1835 was based upon the provisions of this act, then the United States were bound to furnish the Cherokees, with whom they were treating, a country west of the Mississippi. But in no event could the country of the Western Cherokees be taken for this purpose, (*until purchased from them*,) without violating all existing law and treaty stipulations, and even the *proviso* to the 7th section of this very act!

It appears, however, from the Treaty itself, and the correspondence between the contracting parties during several years before its conclusion, that an *exchange of land was not intended*; but that a sum in money should be given for the country east, and that the Cherokees should purchase a country for themselves west of the Mississippi. If this be the case, then the country at present held by the *Eastern Cherokees*, the "Ross nation," on the west of the Mississippi, containing seven millions of acres, will be a clear gain to these people, if the United States now agree to purchase it *for their use*, from the rightful own

ers, the "old Western Cherokee nation." The "Eastern Cherokees" have paid for the additional tract of 800,000 acres, conveyed by the Treaty of 1835; but for the *seven millions of acres*, they have not paid one dollar, either to the United States, *by the sale of lands under that compact*, or subsequently, to the Western Cherokees. The condition of these two nations under this construction, therefore, stands thus: The Cherokees, (known as the "*Cherokee nation west of the Mississippi*") anterior to the Treaty of 1835,) accepted of their share of the lands held *in common*, on the east of the Mississippi; and by the Treaty of 1817, *exchanged it with the United States for a country of equal extent west of the Mississippi*. This exchange was confirmed by the Treaty of 1819, which added considerably to the cession, and all the property previously held *in common* by the Eastern and Western Cherokees was thereafter to be held *separately*. The Western Cherokees received no MONEY for their lands in the east, thus relinquished to the United States. They were paid entirely *with lands in the west*, to be given *acre for acre*, according to the quantity ascertained to have been relinquished! Within the country thus acquired, the Western Cherokees erected a national government; and, in the year 1828, in their *national character*, exchanged this country for a country still further west. They were the pioneers who planted the first mark of civilization in the wilderness then allotted to them, having fought their way against the Osages, and other wild tribes, who committed numerous depredations upon their property, and murdered their people. In the year 1833, these hardy "Old Settlers" had acquired by their perseverance, industry and fidelity, a large territory, as a permanent and peaceful abode for themselves and their posterity. In that year they permanently settled their boundary lines, *by Treaty*; and were promised a PATENT, conveying a *fee simple title*, for the country thus acquired, "as soon after the ratification of that Treaty as practicable." What did they witness two years afterwards? Why, they found a Treaty entered into by the United States and the *Cherokee nation east of the Mississippi*, by which their country was considered the *common property* of the *whole re-united nation*, and disposed of accordingly. They, therefore, were left without remuneration in *money or lands*, for their share of the *common property*, which they relinquished in the east by the Treaty of 1817 and Convention of 1819!! The Eastern Cherokees proposed by the Treaty of 1819, to which the Western Cherokees agreed, that the country east should be divided into three equal parts, and the first would accept of *two* and the latter *one* part as their share of the common property. This division was made by Treaty, and the Western Cherokees obtained a country in the west for their share. The Eastern Cherokees in the mean time sell their *two-thirds* for money, and then claim another division of the *original ONE-THIRD given to the Western Cherokees!!!* And the latter were forced to submit to this unrighteous proceeding by the operations of the Treaty of 1835.

Let us now look at the condition of the Cherokees east of the Mississippi, under the provisions of that Treaty. They were to receive under its stipulations, for their share of the *common property* retained east of the Mississippi, under the provisions of the "Treaty of 1817 and Convention of 1819," the sum of *five millions of dollars*! And, in addition to this, they were *permitted to take possession of the country previously secured to the Cherokees West of the Mississippi*, without paying any value therefor! Is this right—is it just—will it be tolerated? If the country claimed by the Cherokees west of the Mississippi as their exclusive property, belonged to the *whole nation* as it existed before the Treaty of 1819, then the Treaty of 1828, negotiated with the *Western Cherokees* solely, can have no binding effect, and the *land in Arkansas still belongs to the Cherokee nation*! And the Treaty of 1833 must also be considered a nullity, for it was only negotiated, according to the government's own showing, with *one-third* of the whole nation!

But we will go further. Suppose the country secured to the "*Cherokees west of the Mis-*



issippi," by the Treaty of 1817, in exchange for their portion of the lands east, could legally be considered the *common property* of all the Cherokees, *east and west*, must not the country retained by the "*Cherokees east of the Mississippi*," and secured to them by the same compact, also be considered the *common property of the same parties*? Most unquestionably, upon every principle of justice, law and common sense, it must. But, that no such idea or opinion was, in reality, entertained by either of the parties to the Treaties of 1835, is clearly evidenced by the 15th and 18th articles of that instrument. The line of separation, continuing the "eastern" and "western nations" as separate communities, is there distinctly preserved. In making a disposition of the money to be paid for the ceded lands, the 15th article provides for the division of any *surplus* as follows:—"The *balance, whatever the same may be, shall be equally divided between all the people belonging to the Cherokee nation EAST, according to the census just completed, and such Cherokees as have removed west since June 1833, who are entitled by the terms of their enrollment and removal to all the benefits resulting from the final Treaty between the United States and the Cherokees EAST, they shall also be paid for their improvements, &c.*" This article will admit of no construction that does not deprive every Cherokee, who emigrated west *anterior to June 1833*, of all or any of the benefits resulting to the Cherokees east under the provisions of the Treaty of 1835; and of course all who are thus excluded, were considered as having no share or interest in the lands ceded to the United States, by that compact. A similar distinction is kept up in the 18th article of the Treaty. It is there agreed between the contracting parties that the annuities arising out of the permanent fund of the nation, secured *by this Treaty*, shall be expended in the purchase of provisions and clothing for the poorer class of the Cherokees, during the period of two years from and after its ratification. This provision excludes from this application, the annuities belonging to the Western Cherokees, in the following manner: "*It is not, however, intended in this article, to interfere with that part of the annuities due the Cherokees west by the Treaty of 1819.*" This article closes the stipulations of the Treaty of 29th December 1835, concluded between the United States and the Cherokees east of the Mississippi; and in this last act, the separate and independent character of the "*Cherokee nation west*," is still distinctly recognized, by the declaration, that the property secured to them by the Treaty of 1819, could not be interfered with by the parties to this Treaty!

The undersigned will now close their investigation of the claim presented by the Western Cherokees now called the "Old Settler" party of the Cherokee nation. They have presented a faithful history of the origin and progress of the Nation west of the Mississippi, and have approached the threshold of its downfall, under the sanction of the Treaty of 1835-6, to which it was not a party, and from the benefits of which it is expressly excluded by the provisions of that instrument itself. The published records of the government of the United States, have furnished the evidence and given life to the opinions casually expressed in presenting the result of this investigation. This evidence clearly and conclusively proves that the Old Settlers, then called the "*Cherokee nation west of the Mississippi*," were the sole Indian party to the Treaty of 1833, by which a FEE SIMPLE was confirmed to them by the United States, for the large and valuable country then in their occupancy. That compact has never yet been abrogated *by the parties who made it*, and has now as much binding force, as it had on the day it was ratified by the President and Senate of the United States. It has been feebly argued, by those who have attempted to justify that provision in the Treaty of 1835 which designates the country west as a home for all the Cherokees *east and west*, that such provision was warranted by the invitation contained in the Treaty of 1828; and also that the Treaty of



1835 was sanctioned by the signatures of two Delegates representing the Cherokee nation west. Neither of these positions is tenable.

We have already shewn, by incontestible testimony, that the eastern nation obtained no territorial rights in the west, under the Treaty of 1828. It is gratifying to perceive that our government does not longer adhere to that absurdity. Suppose, however, that all the Cherokees, removed west under the Treaty of 1835, could claim under the 8th article of the Treaty of 1828, in what condition would it place the United States? By that article every Cherokee, man, woman and child in the nation east, who have emigrated since the year 1828, would be entitled to "one blanket"—every head of a family to a "good rifle, a kettle and five pounds of tobacco," in addition to the blanket—and every Cherokee from within the limits of Georgia, would be entitled to TEN DOLLARS in money, in addition to all other inducements offered to procure emigration, by this 8th article!! Let the government cast up this account, and it will be found that the eighteen thousand Cherokees, removed since the Treaty of 1828, and most of them under the Treaty of 1835, can now present a claim for upwards of *four millions of dollars*!! The construction, therefore, attempted to be put upon the 8th article of the Treaty of 1828, for the purpose of justifying the removal of the Cherokees east to the country west, and thus defeat the claim of the Western Cherokees to that country, would, if correct, be a much more serious matter to the Treasury than would be produced by doing an act of simple JUSTICE to the aggrieved party, who have proved the fallacy of such construction.

In reply to the allegation that the Treaty of 1835 was sanctioned by the Western Cherokee nation, we have but a few words to say. This nation never signed or sanctioned that instrument in any shape or form. Appended to the Treaty, as printed, there appears a paper, signed "James Rogers and John Smith, Delegates from the Western Cherokee nation." They had no authority from their nation to sign that paper—they did not represent the Western Cherokees, and one of them was picked up on the spot, by Commissioner Schermerhern, for the occasion. This was a dark transaction, but it is sufficiently exposed in the report made by the Commissioner of Indian Affairs, recently communicated to both Houses of Congress by the President of the United States. [See Senate Doc. 298.] At page nine of this report, it is clearly and sufficiently shown that Rogers and Smith could not make the Western Cherokees a party to the Treaty. And if even they could do so, the paper bearing their signatures, and giving assent to its conditions, contains the following clause protecting the rights of their nation, viz: "But it is expressly understood that nothing in this Treaty shall affect any *claims of the Western Cherokees on the United States*." A full exposition of the means used to procure the signatures of Rogers and Smith to the instrument attached to the Treaty of 1835, will be found in argument No. 2, of the counsel of the Western Cherokees, on pages 32 and 33 of the document above referred to.

In accordance with the order in which we placed the several parties existing in the Cherokee nation, we will now proceed to lay before the Government and the country a concise but faithful history of the rise, progress, and destruction of the "Treaty party," and present the various grievances of which they complain, and for which they seek redress at the hands of the United States. We will then proceed to show the origin of the "Ross party," the conduct of the great leader of that party, east and west, and expose the manner in which that celebrated instrument, called "*an act of Union*," was brought into existence, by which the present "Cherokee nation" holds the country of the old "Western Cherokees." Before we proceed in these investigations, however, we will introduce some more testimony furnished by the United States, which we conceive will put to rest all and every question, about the title of these people to that country, at the time the Treaty of

1835 was negotiated: and yet, inconsistent as it may appear, we will show that this last mentioned Treaty furnishes strong evidence that it was based upon *an exchange of lands*—and that the price fixed upon as the value of the country east, was arranged upon this basis.

We have already referred to the “3d volume of Senate documents, 1st session of 23d Congress, No. 512,” designated in the title page, “Correspondence on the subject of the emigration of Indians, between the 30th of November, 1831, to 27th December, 1833,” and marked on the back of the volume, “22 and 9.”

At pages 421, 422, and 423 of this volume, will be found a report from ELISHA W. CHESTER to the Secretary of War, dated August 11, 1832, giving the result of his mission among the Cherokees for the purpose of inducing them to sell their country east, and remove west of the Mississippi river. Mr. Chester was the special agent of the United States Government, charged with this diplomacy. In order to show clearly and unequivocally that the Government did not then claim for the Eastern Cherokees any portion of the country belonging to the nation west, we call attention to a communication addressed by Mr. Chester to John Ross, principal Chief of the nation, and enclosed in his report, marked B. It will be found on page 425 of the document above referred to—is dated “Council ground Cherokee nation, July 31, 1832,” and reads as follows:

SIR: I am instructed by the Secretary of War to say, that such is his confidence that a country can be selected for the Cherokees west of the Mississippi, which will meet their approbation, that he is willing to enter into a negotiation subject to that condition. In other words, the terms of a Treaty can be arranged and agreed upon, which shall not be binding upon the Cherokees until they shall have examined the country and agreed to accept it. Such a course would enable the President, should it be found necessary, to enter into negotiations with any of the Tribes west of the Mississippi, in order to effect any desired arrangements for the Cherokees. If apprehended want of a SUITABLE COUNTRY to which they may remove, be an obstacle in the way of a TREATY, it cannot be an obstacle to such a conditional arrangement as is suggested.” \* \* \* \* \*

Will any man, no matter what his opinions and prejudices may hitherto have been, after reading the above declaration made by the United States Government, pretend to say that, at the time it was uttered, any claim was asserted for the Eastern Cherokees to the country west of the Mississippi river, belonging to the Western Cherokees? Here it will be seen that in July, 1832, a Treaty was proposed with the Eastern nation based upon the PURCHASE of a suitable country from some of the tribes west of the Mississippi. The Western Cherokees then held their title to the country west under the provisions of the Treaty of 1828, and this title was confirmed to them by the Treaty of February, 1833, without making any provision for the accommodation of the Eastern Cherokees!!

We will refer to one other official communication, which will be found on page 612, of the volume above cited. It is a letter from the Secretary of War to Gov. Lumpkin, of Georgia, dated March 12, 1833, one month AFTER the last Treaty was negotiated between the United States and the Western Cherokees. The second paragraph of this letter reads as follows:

“I had much conversation with them [the Delegation from the Eastern nation who had just left the seat of Government,] on their business, and stated to them specifically, the terms the President was disposed to offer, founded on the propositions made to them last year.—They were desirous that a sum in goods should be mentioned which the government would be willing to give, if they would relinquish all their rights east of the Mississippi, and seek a country for themselves at their own expense! The President authorized me to offer them \$2,500,000, believing that to be the value of the land in which they have an interest, which does not

exceed six millions of acres. They declined, however, making any arrangement, saying that the subject must be referred to their people. And thus the matter stands for the present."

If proof, strong and irresistible as words of holy writ, were required to maintain the title of the Western Cherokees to their country west of the Mississippi, and exclude the United States and Eastern Cherokees from all interest in it, after the Treaty of 1833, we conceive that such proof has now been adduced. Every one knows that no man in the country is better acquainted with our Indian affairs generally, and with the rights of the Cherokees especially, than the then distinguished head of the War Department. At the time he wrote the above letter, he had three commissioners in the country of the Cherokees west of the Mississippi, who had just concluded a Treaty with that nation establishing permanently the boundaries of their country; yet he makes no allusion to this country, but, on the contrary, directly refers to the desire of the Eastern Cherokees to *sell their country east, and seek a country for themselves at their own expense!* And to this proposition the President of the United States assented. We again say, *mark the dates!* The Treaty, entered into with the Western Cherokees as a separate and distinct nation, and confirming their title to the exclusive ownership of a COUNTRY, was concluded on the *14th day of February, 1843!!* The letter of the Secretary of War is dated *March 12, 1833, some days after that Treaty was received in Washington!* It was not then even pretended that any portion of the Cherokee country WEST of the Mississippi belonged to the Cherokee nation EAST of that river.

We have done for the present with the Old Settlers, or Western Cherokees, and make room for the history of the "Treaty party." If our country's records speak truth, their claim is established to SEVEN MILLIONS OF ACRES OF LAND, surveyed to them, and for which they are entitled to a patent with a *fee simple* title! They have also established an *occupant title* to all the lands lying west of the above surveyed country, *as far as the sovereignty of the United States and their right of soil extend!!* This country has been taken from them without their consent. Their title to it came from the United States, and to them they look for indemnity. They desire to injure or harrass no portion of the Cherokee people. They have remonstrated respectfully and peaceably against the settlement of another people upon their land without their consent, and if their appeals had been listened to, and the wrong redressed, as far as it could be done, the Cherokees might now be a prosperous and united people. When the demon is unmasked, who has heretofore prevented these things being accomplished, there will be an awful day of reckoning in the Cherokee nation. Every Cherokee, of every party, if left to exercise his own judgment, and express his own opinion, would rejoice to see JUSTICE done to the old Western Cherokees; but, unfortunately, they have heretofore been controled, because deceived, by an evil spirit who reigns amongst them.



## TREATY PARTY.

*The patriotism of the Treaty party—Their unparalleled sufferings—Neglect of the Government to their friends.*

We come now to a statement of the case of the "Treaty party"—a worthy party who have endured, with becoming patience, unparalleled neglect by the United States, and a cruel war of extermination from John Ross and his adherents.

A full history of this "Treaty party" may be found in the statement of their case, recently communicated to Congress by the President of the United States.—(See Sen. Doc. No. 298. 29th Cong. 1 Sess. p. 47 to 57.) This narrative is founded upon record history, and shews that a pure patriotism animated those excellent men, the lamented RIDGES, BOUDINOT, STARRS, RECESSES, BELLS, RODGERSES, ADAIRS, FIELDSSES, and many other intelligent families, who were forced to become the advocates of a Treaty, and removal, after the complete conquest of their country—its partition—lottery—occupation—civil organization—total annihilation of the Cherokee *polity*—abrogation of all Cherokee Laws, and the subjugation of all Cherokee citizens to the inequality of State Legislation. The Cherokee Government was a mere name—a mockery, which could afford neither redress of grievances, or protection against their recurrence.

The motives of these patriotic men, who thus risked their lives and popularity, by advocating a cession of lands, bears a most favorable contrast with those, who, from motives of cupidity, contended for the value of gold mines—the subjugation of the people to *state rule*—and every species of speculation, by which John Ross and his followers, who had forfeited their every Indian right, by taking reservations under previous cessions, and becoming citizens of the states, had learned to profit.

The Treaty party were told by the high functionaries, who administered the Government of the United States, that the latter could not protect the Indians against the desolating effects of the state laws, and as such, headed by RIDGES and BOUDINOT, they were soon known as the "RIDGE" or "TREATY PARTY" in contradistinction to the "ROSS," or "ANTI-TREATY PARTY."

This party were encouraged by the Government of the United States, and regarded as the steadfast friends of the Indians. Their course was approved both in a *political* and *moral* point of view. Politically it relieved the United States and the States of a long vexed and perplexing question—an issue which the Christian and Philanthropist must ever lament.

In the epitome of their history already referred to, and in the farther "statement of the case," Sen. Doc. 298. 29th Cong. 1st Sess. from page 73 to 149, many startling facts are recounted, which our limits will not allow us even to sum up, but which are necessary to be thoroughly understood, in order to render even partial justice, to a noble people inhumanly sacrificed.

These several propositions we assert however are incontrovertibly proven:

1. That the signers and advocates, of the Treaty of 1835, by which the Cherokee lands east of the Mississippi river, were ceded to the United States, are *each and every one of them entitled to the "PROTECTION"* of the United States, against wrong, oppression and persecution in consequence of the acts of advocating and signing that Treaty. But,

2. That this PROTECTION has not been afforded. On the contrary they have been shamefully *neglected*—their LEADERS ASSASSINATED by the direction and abetment of JOHN ROSS and his adherents—the chosen instruments of these bloody conspiracies, screened, sheltered and PARDONED by ROSS and his *Revolutionists* and "COUNCILLORS," and the remaining signers of the Treaty and their friends "OUTLAWED" and left to the tender mercies of

armed banditti and "POLICE," hired and paid out of funds provided in the *Treaty of 1835* for the common benefit of the whole Cherokee people.

3. *That the Treaty party and each and every of them, are entitled to a fair and equal participation or per capita division of the FUNDS for which the eastern country was ceded by the Treaty of 1835.* But,

4th. *That this money has been long wrongfully withheld, and these men and their families left in suffering.* Because,

5th. *It has been wrongfully and illegally paid to John Ross and his adherents to the exclusion of the Treaty party; and otherwise misapplied.* Nor

6th. *Have the Treaty party an equal participation in the \$564,000 of National education and orphan fund, intended for the common benefit.* Because,

7th. That fund is used to pay "GUARDS," "POLICE," "LIGHT HORSE," "INDIGNANT MOBS," and "HIRED ASSASSINS," who have from the fatal 22d day of June, 1839, to the present day, MURDERED, OPPRESSED, AND EXPELLED from the country the leading members of the "TREATY PARTY" and their FAMILIES. Which high handed measures and others equally unjustifiable, have cost the Cherokee Nation from FIFTY TO ONE HUNDRED AND FIFTY THOUSAND DOLLARS, *per annum* for the "humane Ross Government."

1. THE TREATY PARTY ARE ENTITLED TO PROTECTION. And this because they have always been the steadfast friends of the United States. Major Ridge, James Starr and Charles Reese, besides others who have been victimized were the bravest among the brave in our wars against the Creeks and Seminoles. They were our friends in perilling the vengeance of Ross and his adherents—advocating, signing, sanctioning and complying with all the provisions of the Treaty, for the cession of their lands. For this loyalty we promised them PROTECTION.

At page 123, of Doc. 298, already referred to, the Treaty party shew that on the 28th February 1835, Genl. Cass, Secretary of War, declared,

"THAT THE PRESIDENT WOULD NOT CONSENT FOR ONE MOMENT, TO PUT TO HAZARD THE PECUNIARY INTEREST OR PERSONAL SAFETY of those who have been endeavoring to promote the views of the Government, and at the same time, to secure the welfare of their own people. THEIR INTERESTS MUST UNDER ANY CIRCUMSTANCES BE PROVIDED FOR."

The same language is more strongly held in Senate Doc. No. 120, 1st Sess. 24th Cong. pp. 90, 93, 98, 99, 101, and other parts of said Doc. And the 6th Article of the Treaty of 1835, is intended as a *guaranty* of these solemn promises, as has been held ever since its ratification. This pledge of the United States was not necessary to guard the signers of the Treaty of 1835, against any existing law, "*a law held in particular reverence by the Cherokees, particularly the elders*"—as hath been truculently said by JOHN ROSS and the "Cherokee authorities." Because from the history already referred to, and the argument of the Treaty party—Doc. 298, 1st Sess. 29th Cong. it is shewn that all CHEROKEE LAWS HAD BEEN ABOLISHED,—and a reference to same Doc. pp. 116 to 122, and 175 and 176, this is made so plain that it cannot be misunderstood.

Again, before the cruel assassination of the Treaty party, they had been emigrated to their new home west of the Mississippi, had been mingled with a new community, *where no such law existed*, and the argument, that the *transferred* population, carried along their *absolute laws of blood*, is too preposterous even for murderous felons.

But, whether the Treaty party were right or wrong in their negotiations with the United States, every principle of honor, which binds man to man, should urge upon the United States their protection.

It is assumed as a second proposition that the powerful Government of the United States, has not afforded the protection guarantied; but had neglected their friends and per-

mitted Ross and his adherents who opposed the Treaty of 1835, (*but received all its pecuniary benefits,*) to murder and destroy the leaders of the "Treaty party" and expel many of their families and friends from the country.

This proposition is sustained by the history of the facts as found in the Report of the Commissioner of Indian Affairs, accompanying the President's Message of 1839; and in Sen. Doc. 298, 1st Sess. 29th Cong. pp. 108 to 116 and pages 186 *et seq.* and particularly 221.

The assassination of Major Ridge, John Ridge, Elias Bondinot, Jacob West, John Fields, James Starr, Thos. B. Watie, Rider, Smith and others, numbering among them many of the signers of the Treaty of 1835, and all of whom were members of the Treaty party, are historical facts; and the total failure to punish their murderers, fully illustrates, that the extermination of the Treaty party has been steadfastly persevered in by the Ross party who have ruled the destinies of the Cherokee country.

The United States being thus bound to afford this protection, and this obligation having been disregarded by the Ross party, and the friends of the United States being thus sacrificed, the question arises, how shall this high obligation be redeemed? Were the Ross party an INDEPENDENT STATE, as they falsely argue, every principle among civilized nations would warrant and justify a demand of satisfaction with the sword. The same principle which justified the interposition of the United States to prevent a savage massacre by Mexico of the Texans, whom they claimed, as a department over which they had exclusive jurisdiction, because of their friendship and feeling of *affinity* towards the United States, would justify a still more decisive course towards the savage portion of the Cherokees. But as these people are too weak and powerless to be chastised by war, and their country is within the jurisdiction of the United States, subject to their legislation, the object to be attained may be accomplished by the force of salutary LAWS. The plan proposed by the Treaty party themselves, as well as by the Western Cherokees, and recommended by the President, after due deliberation, to Congress, is a DIVISION, OR PARTITION of the present CHEROKEE COUNTRY, and a *separation of the Treaty party and Western Cherokees* from their oppressors—the Ross party. Were there no other argument in favor of this policy, the demands of humanity loudly call for the measure. This question of remedy will more properly be discussed in another place.

*The next proposition of the Treaty party, relates to their demands for per capita money.*

The promise that their pecuniary interest should not be placed at the disposal of the majority party, is guaranteed by the same high authority, which is bound to them for personal safety.

The justice and equity of this claim, and the figures to support it, are fully set forth in the statement of their case.—Sen Doc. 298, 1st ses. 29th Cong. p. p. 73, *et. seq.* It may be summed up thus: The 5,000,000 dollars, for which the Cherokee country east was ceded, is subject to a few charges, which, upon no principle of equity or fairness, can exceed \$2,000,000. The balance of this fund, after deducting these *certain* amounts, is subject to a *per capita*, or head-right division, among the respective members of the tribe, as constituted east in 1835—amounting in numbers to about 16,000 souls. Of this sum, the Treaty party are shown to have got *nothing*, while it is a matter of history that *John Ross has received over \$1,000,000 dollars* of this "TRUST FUND," and pocketed the same to the exclusive benefit of himself and family, who have thus been given princely fortunes.

The means by which this sum was amassed, and the *perfidy* employed in holding it, are fully exposed in the document last referred to, and the authorities there cited—Page 76, *et seq.*



A protracted discussion of this branch of the subject, at this time, becomes unnecessary. The President finding no excuse for the unpardonable delay in distributing this fund, says, in the Report of the Commissioner of Indian Affairs: "*There is no doubt that the per capita money has been greatly reduced by the large sums placed in the hands of John Ross,*" &c." And it is proposed to make a fair settlement of accounts, and to pay the "Treaty party" their just dues under this head. In doing so, the adherents of Ross will of course have to hold him responsible for the sum \$83 25, which he has received for each, of about \$12,000 souls, but not one dollar of which he has ever paid them. His worst enemy could desire no worse punishment for him, than to place him under this responsibility. In order to understand the "MONSTROUS FRAUD" which this man has perpetrated in this respect, we ask a careful consideration of the document last referred to.


It must be apparent to every one that, owing to the total failure of the United States to afford the Treaty party the protection guaranteed to them, and to pay them their acknowledged just dues, they have had to incur great expense, and be exposed to great personal responsibility and loss. Every movement indicating an appeal to the Government of the United States for redress has been denounced as "treason" and "conspiracy" against the "constituted Cherokee authorities." The great business of the "POLICE," "LIGHT HORSE," and "GUARDS" has been to "HUNT THEM DOWN," "SHOOT" and SLAY THEM—and the constant energies of Mr. Ross and his delegations, who make annual pilgrimages to Washington, at an expense of over TEN THOUSAND DOLLARS per annum to the treasury of the CHEROKEE NATION, have been bent to defeat the applications of the "Treaty party" and "Western Cherokees" for even-handed justice. To prevent them realizing their just dues, escaping total annihilation, and to disgrace the living and the dead, has been their constant aim. For this purpose "GUARDS" have not only been employed, but a "press established at the national expense," which weekly sends forth the most infamous libels against the living and the DEAD, and publishes the most incendiary invectives against the "REFUGEES" who have been obliged to flee to a neighboring State, to avoid the tragedies which have befallen so many of their friends and kindred. Among these "*refugees*" are the heirs of the fallen Ridges and Boudinot, and James Starr, signers of the Treaty, which gave the United States a country of vast value; for which act these good men were murdered, and their widows and orphans from Arkansas and Vermont, now appeal to the Government of the United States, not to pay them for the loss of the VALUABLE LIVES of their PARENTS, but for some redress for the *actual loss of property* consequent upon these tragedies. Does it not strike every one that these persons, and all the sufferers among the signers of the Treaty, are entitled to be restored their all, which has thus, for the act of the Government of the United States, been taken from them?

This is a branch of the subject presented to the peculiar consideration of Congress at this time.

In the protest of John Ross and his delegation (p. 151, S. Doc. 298,) in which they assume that they "are the only citizens of the Cherokee nation authorized to be heard by the President, they say: "We have eighteen *public* schools, and some private institutions of like character."

They omitted to tell that, these schools are supported out of funds provided in a Treaty sealed with the blood of RIDGES and BOUDINOT, and of JAMES STARR, SIGNERS of that Treaty, and yet their ORPHANS cannot enjoy the benefits of these "PUBLIC SCHOOLS" without being exposed to be "SHOT DOWN" after the manner of "BUCK STARR," an INFANT, whose murder in open day, by a banditti of their assassins, is excused by the "CHEROKEE AUTHORITIES" and "CHEROKEE NEWSPAPER."

No. The orphans of Ridges and Boudinot, their fathers assassinated—robbed of private property—driven from all participation in the Cherokee funds and Cherokee domain—their *per capita* dues withheld—their friends and advocates infamously abused by a lying Cherokee print, which maligns the living and dead whenever they dare point to the blood of the fallen, which cries unavenged from the ground—receive a precarious support and limited education, from the industry and *needles of Christian mothers*, who nightly invoke forgiveness to all the enemies of God and his anointed. And these are the people to whom the strong power of the United States stands *pledged* for “PROTECTION.” And their persecutors are the same whose obstinacy cost the United States some blood, and millions of treasure to remove them! Is there a man in or out of Congress who will not raise his voice in favor of JUSTICE TO THE WIDOW AND THE ORPHAN?

 NOTE.—That portion of the promised history, which relates to the “Ross party,” is postponed for the present. Since we commenced writing the foregoing, we have been informed that the head of that party has employed his own *historians* for that purpose, whose work will be laid before Congress in a day or two. We reserve to ourselves the pleasure of reviewing that history. In the mean time, for a brief, but true biographical sketch of the great “EMBODIMENT” of that party, (who has inflicted upon his followers all the wrongs and injuries they have ever suffered,) we refer to the papers accompanying the President’s message, printed in Senate document, present session, No. 298, especially to Letters No. 5 and 6, commencing at page 57, and ending at page 73. And for the character of the instrument, called an “*Act of Union*,” we refer to the same document, Letter No. 3, commencing at page 40.

## THE COMMISSIONER’S REPORT.

We congratulate the friends of justice and humanity, that in the present Commissioner of Indian Affairs, Secretary of War, and President of the United States, the Cherokee Old Settlers and Treaty Party have found men whose ears are open to their complaints, whose hearts are impressed with the magnitude of their wrongs, and whose hands are ready to give them protection and redress. It is as honorable in governments as in individuals to confess the wrongs committed by them and make reparation to the injured; and in the eye of Heaven there is no more noble sight, than when a powerful people come forward to give relief to the weak, whom through passion or error, they may have been instrumental in oppressing.

The Commissioner admits, in its fullest extent, that the lands ceded to the Western Cherokees in 1817, were their *separate and exclusive property*, and he says, page 8, “*there can be no question that in the New Echota Treaty of 1835, it was erroneously assumed that the whole Cherokee country west was the common property of the Cherokees east and west.*” There is indeed an intimation that possibly a distinction may be found between the four millions of acres surveyed to them under the Treaty of 1817, and the three millions added by the Treaty of 1828; but when it is considered that the four millions first granted were afterwards given up and exchanged for seven millions admitted to be of less value, it seems impossible to maintain any such distinction. If the Western Cherokees had an exclusive title to *any part* of the seven millions, it was exclusive as to the *whole*; for it is all embraced in the same Treaty, and in the same words. “The United States,” says the Treaty of 1833, “agree to possess the Cherokees, and to guarantee it to them forever, and that guarantee is hereby pledged, of *seven millions of acres of land*, to be bounded as follows,” &c. It is not possible to separate this tract and say that four millions of acres were held by one title, and three millions by another. The whole is as much the exclusive property of the Western Cherokees, including those who joined them under the Treaty of 1828, as the original four millions were. Of this fact it is impossible to doubt.

"For so much of the lands which it may be determined belonged exclusively to the Western Cherokees," says the Commissioner, page 10, "as may be necessary for the accommodation of those who removed under the Treaty of 1835, **THEY HAVE A JUST AND VALID CLAIM TO COMPENSATION.**" And this is one of the views in which the Secretary of War and the President fully concur.

Need we ask, by what standard the amount of this "*just and valid claim*" shall be ascertained and established? All just men will answer, **THE FULL VALUE OF THE LAND.** To give less will not be **JUSTICE.** To take advantage of these people's helpless and distressed condition, and withhold from them the full value of the property which the government has wrongfully taken from them, if not absolutely *dishonest*, would be *unbecoming a rich and powerful nation!* A nation which has the means and refuses to *be just*, can neither respect itself nor be respected by other nations.

The Western Cherokees are willing that the value of their country shall be determined by a rule which the United States themselves have prescribed. In the Treaty of 1835, they sold to the Eastern Cherokees 800,000 acres of land adjoining the lands of the Western Cherokees on the north, charging therefor \$500,000, which was deducted from the purchase money of the country east. This tract is far inferior in soil to the seven millions of acres belonging to the Western Cherokees.

Did the United States **CHEAT** the Eastern Cherokees by charging them too much for this tract?

Or would they now **CHEAT** the Western Cherokees by paying them a less price for far superior land?

The United States claim to be the *Guardian* of the Indians—their "*Great Father.*" What honest guardian, what just father, would take advantage of the weakness and dependance of his ward or child, to charge him *too much* for property sold him, or pay him *too little* for property bought of him? Or if he find that through mistake he has taken his ward's property and sold it to another, *can he*, as an honest man, *refuse to pay its full value?*

The Western Cherokees have never desired to sell their lands to the United States, and if the government will take away those whom they sent there with Mr. Ross, and restore their annuities, they will be content without the sale of an acre. And they are willing to sell *just as little* as the government may desire to buy. But can they, with decency and in good conscience, be asked to take less per acre than the government *has actually charged* their brethren from the east?

For the Cherokee country east the United States gave \$5,000,000. If the number of acres were 8,000,000, as estimated, this was 62½ cents per acre, or the exact price of the 800,000 sold to the Eastern Cherokees in the west. There is no comparison in the *value* of the Cherokee lands east and west per acre, the latter being incomparably more valuable for all agricultural purposes; and why should the United States think of giving a less price to the Western Cherokees than they gave to the Eastern?

We are sure that if this were a case between two individuals, there would be no discussion about it. A man who had, by his own acts, admitted the value of a piece of property he had taken from a weak neighbor and was bound to pay for, as clearly as the United States have in this case, would be **ASHAMED** to offer a less price for it; or if he were not, the whole world would cry *shame upon him!* If it were a case in which he could be brought into court, an honest jury would, without further evidence, take *the price he had charged* **THE LOWEST PRICE HE WAS BOUND TO PAY.**

The Commissioner suggests that the Western Cherokees might be satisfied with the seventy dollars a head, which was the *least* amount virtually promised them by General Ar-



buckle when urging them to agree to the void act of union in 1840, though he does not say that it would be a just criterion. If *all* the inducements then held out to them were to be realized, the Western Cherokees would now gladly settle their pecuniary claims upon the basis of that act. Not \$70 only, but from \$100 to \$200 per capita money was promised them; and as a consideration for admitting the Eastern Cherokees into a common ownership of their lands, they were promised a common interest in the 20,000,000 of dollars which Mr. Ross claimed for the Cherokee country east! The United States, through their authorized agent, pressed upon the Western Cherokees to sign the act *with this inducement on its face*, and they are now precluded from saying it had no just influence. We all know, that the great mass of the Cherokees believe to this day, that they have never sold or been paid for their country east, and that a large sum of money is yet to be received from the United States. With such impressions extensively prevailing, it cannot be reasonably expected that the Western Cherokees will now be satisfied with realizing only the *very least* of the inducements then held out to them.

Nor must it be forgotten that when a few of the Western Cherokees were with difficulty induced to sign that act, their government had been overturned; no hope of its re-establishment remained; their exclusive right to their country was denied; and they had no alternative but to make the best terms they could, or maintain an almost hopeless controversy, not only with the Ross party, but with the United States. To take the terms on which a few unauthorized individuals were, under such circumstances, induced to sign that paper, as a rule for adjusting the now recognized claims of the Western Cherokees, would be unjust to that people, and in every respect improper. It would be to give vitality to a portion of an instrument admitted to be void in all its parts; to hold a whole people to the unauthorized act of a few persons under a sort of duress; to insist that the pittance which these few were willing to accept when reduced to despair, shall satisfy a whole people whose rights are now proved, recognized, and established beyond doubt, if not beyond controversy.

No, no! The people of the United States are JUST. Their representatives in Congress must be *just*, or they will not truly represent their constituents. They will ascertain the *true value* of the lands to be permanently withheld from the Western Cherokees and pay them in full, *be the amount what it may*. While maintaining our national right to lands stretching from ocean to ocean, and almost from the torrid to the frigid zone, they will not fail to satisfy the *just claims* of a humble and distressed people, who can look only to Heaven and them for justice and protection.


To guard the Treasury against fraudulent claims is the duty of Congress; to refuse payment of just claims because it will take money from the Treasury, is *dishonest*. A public man who would refuse to pay a just claim out of the Treasury, *would refuse to pay a private debt if he dared*. For refusing public justice now, there is no excuse; for the money in the Treasury, for which the Government has no immediate use, is sufficient to pay the claims of the Western Cherokees many times over. To Congress we say, *here is a claim admitted to be just; you have on hand the money to pay it; SHALL IT NOT BE PAID TO THE LAST CENT.*

It has been the policy of John Ross and his associates to prejudice the cause of the Old Settlers and Treaty party by railing against their counsel, and charging the advocacy of their claims to motives of interest and speculation. This comes with an ill grace from those who enrich themselves by speculating upon the property and sufferings of their countrymen, and have never failed to employ counsel to advise and assist them in all their operations. Who is ignorant of the heavy sums paid by them to Kent, and Wirt, and Sergeant, and Underwood, and Rockwell, and Hansel, and Harden, and many others. Even now they have able counsel employed to defend their acts and sustain their power.

Of this no man has a right to complain. From the highest to the humblest, mankind frequently need advisers and advocates to investigate their rights and defend them against wrong. Out of the necessities of men and their conscious inability to do justice to themselves, has grown the profession of law which exists and flourishes in all civilized communities. No question involving great personal pecuniary interests is now managed in our country without the aid of counsel, and even the criminal who is unable to procure legal advice, is furnished with an adviser by order of court, and at the expense of the public. There is not a brighter page in the history of Queen Elizabeth than that which presents her as directing the discontinuance of the barbarous practice which denied to persons charged with crime, counsel and witnesses. The Court of King's Bench, the Supreme Court of the United States, the great civilians of France and the European continent generally, do not venture to decide causes involving great principles and important interests without requiring the arguments of counsel. And how often does it happen, that to avail themselves of the research and conclusions of able lawyers, the courts direct important questions to be re-argued? As to the citizen, it is seldom that any man ventures to manage his own case in court, however simple; but all, from the prince to the peasant, including lawyers themselves, seek the counsel and assistance of others. Nor did our fathers think a government complete without an Attorney General to advise the President and the members of his Cabinet, and to look after its interests in the Supreme Court. Throughout the country, the United States and the several States, have their attorneys in every district, paid out of their treasuries, to advise, prosecute, and defend on account of the public.

Now, if the most learned and able individuals feel the need of advice at every step in pursuing their rights, and if Government itself, which commissions judges and generally appoints jurors, cannot trust its own rights before them without the aid of learned counsel, are the weak and powerless among the Cherokees to be prejudiced because they have employed counsel to investigate their rights, make known their wrongs, and seek for redress from the Government and people of the United States? Impossible! The outcry raised *comes from tyrants and oppressors*, who would deprive their victims, not only of liberty, but of the means to make known their wrongs and oppressions. Or are those to be rebuked who, as friends of humanity, or in the pursuit of a lawful calling, undertake to advocate the cause of the poor against the rich, the weak against the powerful, the oppressed against the oppressor, the half-educated Indian against his more astute countryman, who has wronged him and the United States, who have aided in and support the wrong? No judge who should dare to rebuke an attorney for appearing in such a case would be permitted in this or any other civilized community to hold his commission for a year, or exercise his powers for another day. In this case, the outcry is one of the expedients to defeat justice; it is an attempt of the tyrant to gag the victim whom he has already CHAINED!

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 **NOTE.**—Such parts of the foregoing history as relate to the course of the General Government, are not to be understood as affirming nor denying its right to interfere with the legislation of the States in the cases referred to; their obligation to the Indians not depending on that question.